HEARING ON A NEW ACT FOR A NEW WORLD ORDER: REASSESSING THE EXPORT ADMINISTRATION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
INTERNATIONAL ECONOMIC POLICY AND TRADE

OF THE

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HEARING ON A NEW ACT FOR A NEW WORLD ORDER: REASSESSING THE EXPORT ADMINISTRATION ACT

Wednesday, March 3, 1999

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE
COMMITTEE ON INTERNATIONAL RELATIONS
Washington, D.C.

The Subcommittee met, pursuant to call, at 2:33 p.m., in room 2237, Rayburn House Office Building, Washington, D.C., the Honorable Ileana Ros-Lehtinen (Chairperson of the Committee) presiding.

Present: Representatives Ros-Lehtinen, Manzullo, Chabot, Rohrabacher, Burr, Menendez, Sherman, Delahunt, and Hoeffel.

Ms. ROS-LEHTINEN. The Subcommittee will come to order.

The exports of dual-use commodities have been and continue to be of critical concern to the national security interests of the United States. In light of recent developments related to the transfer of satellites and possible missile-related technology to China, apprehensions have mounted about the possibility of U.S. exports contributing to the military potential of pariah states and what role the Export Administration Act plays in this scenario.

Initially, at the onset of the cold war, concerns over the transfer of superior technology to governments, factions or individuals may have threatened the collective interests of the United States and its trading partners and it led to the development of unilateral and multilateral export controls to ensure that dual-use technologies with potential military applications did not fall into the wrong hands.

The Export Administration Act of 1979, based on legislation drafted at the onset of the cold war in 1949, had, as part of its original purpose, the tasks of restricting the export of technology and dual-use items, of guarding the domestic economy from scarcity and inflation, of furthering U.S. foreign policy and of protecting U.S. National Security.

This was achieved through a somewhat complex licensing system that allowed the United States to monitor proliferation and the movement of goods into the Soviet bloc nations.

Since 1990, when the Act expired, there have been several attempts made at rewriting the Export Administration Act of 1979. These efforts to develop legislation to meet the needs of a rapidly

developing marketplace and of a new world order have failed to pass through both houses of Congress.

Since then, the Act has been maintained through a series of Executive orders issued through the International Emergency Economic Powers Act. In a post-cold war era, many have argued that there is a need to find a new approach to export controls that deal with today's political realities and increasingly globalized marketplaces, one which shifts the focus from the previous Soviet threat to the existing menace of terrorism and proliferation of weapons of mass destruction and one which balances the foreign policy benefits and the economic costs.

While there is debate over whether there can be coexistence between industry interests and their desire to enhance export competitiveness and national security priorities are promoting effective and non-proliferation policy, lawmakers must look at a way to try to reconcile both goals.

The dilemma we face is how to restrict the spread of potentially destructive technologies, while preserving the ability of U.S. technology exporters to develop their civilian technology markets.

There are those who stress the benefits of export controls and who argue that the economic sacrifices, including reduced exports, are worth the price of ensuring U.S. National Security and that exporters are paying the burden of doing business with possibly dangerous commodities.

Others suggest that new or modified unilateral export control must withstand a cost-benefit analysis, whether the costs of the proposed control on American industries and our economic competitiveness exceed the value to the foreign policy or national security priorities.

Critics of current U.S. export control laws say that the current policies promote interagency grid lock, causing conflicts between the various responsible licensing administrations and their enforcement goals, and that the solution to a more effective export control mechanism lies in streamlining the process and concentrating regulatory authority in fewer agencies.

Still there are those who claim that providing greater transparency on U.S. export control laws while maintaining tighter restrictions on export to terrorist nations would be a more effective approach to bring export control laws up to par with today's current global realities.

Opponents of stricter expert controls have pointed to the foreign availability of many of these dual-use items and claim that some export controls hurt America's competitiveness, because, in effect, we are unnecessarily limiting our access to certain foreign markets and allowing our competitors to benefit.

Others yet point to what they call a lack of effective unilateral controls. Those who criticize unilateral controls claim that they are ineffective and that only multilateral controls, such as missile technology control regime or other acts where allied countries to seek to coordinate export controls are actually the effective tools in nonproliferation.

Supporters of unilateral export controls, however, argue that the United States cannot risk our security interests as we wait for our

allies to decide whether or not to place similar controls on their export markets.

Former President George Bush, in outlining the importance in developing a new Export Administration Act, spoke about some of the key considerations we should look at when drafting new legislation. He said American exporters are entitled to prompt review of export license applications submitted to the U.S. Government based on our commitment to an open International Trading System and the need to ensure America's competitiveness.

While he also emphasized that these changes did not signal a lessening of our determination to weigh cautiously the licensing applications, raising potential non-proliferation or broader national security concerns.

This is the challenge that we face today while considering the future of export control structure of the Administration and the reauthorization of the EAA. We must carefully evaluate the arguments and counter-arguments to find a solution that, first and foremost, safeguards our U.S. National Security and promotes our foreign policy objectives, yet also addresses market demands and incorporates U.S. trade and commercial concerns.

We look forward to the testimony and the recommendations of our very esteemed witnesses that they will offer us today as we begin the reauthorization process.

With that, I would like to turn to my colleague, Congressman Menendez.

Mr. MENENDEZ. Thank you, Madam Chairlady. I look forward to today's hearing. I have a full statement for the record, which, in the interest of time, I would ask to submit. But I do want to make some prefatory comments that as we embark on what I hope will be a successful conclusion which will ultimately conclude in having an Export Administration Act passed through this House and the Senate and get signed by the President.

I think that the Congress has acceded authority to the executive branch by not acting and in doing so, under the Constitution, which clearly gave the Congress the authority to deal with questions of commerce that are not acting, has created an abdication of what is, I think, an incredibly important interest that the Congress should be pursuing and an incredibly important right under the Constitution that the Congress should be exercising.

I'm also concerned, as any one of us who sits on this panel or in this Congress are, about the concerns of national security, as well as economic development and opportunity, that in an ever-changing world, in an ever-changing economic reality of the United States needs to have, and the balance that is struck there is, of course, of incredible importance to us.

However, I hope that we do not, by virtue of our concerns, our legitimate concerns in the context of national security, do not move the pendulum so far as to snuff out the very economic vitality of those commercial enterprises that, in fact, in my mind, assist America in being safer.

Ultimately, the companies that are, in fact, doing the research and development that the United States, as a government, is not doing is, in fact, crucial to the type of competitive advantage that the United States has had in technology against any other ally or

any other potential enemy of the United States, and it is that competitive edge that is ultimately fueled not necessarily by Government research, but by the research and development of the very private sector who falls within the am bit of the Act and ultimately who, if we go overboard on, we will, in essence, hurt ourselves in the context of national security.

So therefore, it's part of our dilemma. I think that there are issues that we can all universally agree upon up front and they include, of course, the questions of penalties. On the side of penalties, we have a regime presently operating under Executive order that I think gives very little teeth to the type of enforcement that we would want to see, as well as a regime that we're working under that ultimately creates, I think, a very significant problem for the enforcement, the intelligent enforcement of our law, and that spreads us so thin in pursuing avenues under the present regulations that do not create a meaningful enforcement regime that can really serve the national interests and the national security interests of the United States.

Having said that, I want to thank you colleague Norm Dicks Chris Cox for their work in making sure that the national security questions which are vital to all of us have been looked at deeply. I look forward to their testimony.

I do intend to have some questions for them based upon some of the recommendations I've seen and how we can work together to strike that balance that protects the national security of the United States, but that understands that the commercial enterprises that are subject to this regime ultimately, also are part not only of economic vitality, but of helping the national security of the United States be further secure in the days ahead.

Ms. ROS-LEHTINEN. Thank you, Mr. Menendez. The Vice Chair of our Subcommittee, Mr. Manzullo.

Mr. MANZULLO. Thank you very much. Madam Chair, I commend you for holding this hearing today, and I can't think of an issue that is more critical to the economic vitality of this nation than the reauthorization of the Export Administration Act.

Bottom line is this. Unless we do something, it's very conceivable that 13 of our largest computer manufacturers will be manufacturing not in the United States next year, but in Europe and Asia.

Because of the vision that was put in the Defense Authorization bill that requires a license for computers that have 2,000 MTOPS and above, we are in the process in the country of sending hundreds of thousands of high-paying jobs overseas.

Second, we have to come to an understanding that computers, that satellites, that machine tools, that electronic equipment is sophisticated, but it's not unique. If we don't sell it, then the French or the Swiss, the Fins, the Radians, the Germans, or the Japanese or the Canadians will do it.

If we do not do this bill correctly, it's close-up time for hundreds of thousands of jobs in this country. This is so absolutely totally critical. We have to take a look at what it means to have something called foreign availability.

Does it do any good for this country to deny the sale of a machine of several million dollars based upon some foreign policy objective, then to have the French move right in and sell the very same ma-

chine to the people who want to buy it? It does two things. The up-front injury is obviously apparent, because we lose the sale of that machine. The second thing is it paints the American manufacturers as inherently unreliable suppliers.

Third, on top of the problems with the EAA, we fight continually with the Export/Import Bank that tries to pride itself upon some type of cloak of humane justice, at the same time while not allowing firms such as Caterpillar to get Ex/Im loans to the three gorgeous dam projects. Our own American Government ends up having the Chinese buy those machines from Japan as opposed to the United States.

We are our own worst enemy when it comes to export policy. We can have an aggressive and victorious and profitable export policy and, at the same time, guard very carefully our national security interests.

Madam Chair, I look forward to working with you on coming up with a bill aimed toward that effect.

Ms. ROS-LEHTINEN. Thank you, Mr. Manzullo. Mr. Hoeffel.

Mr. HOEFFEL. I have no comment. Thank you.

Ms. ROS-LEHTINEN. Thank you. Mr. Chabot. Mr. Delahunt.

Mr. DELAHUNT. Just briefly. Before we begin, I really want to publicly state what I've said to both Mr. Dicks and Mr. Cox privately, that I was—it was very refreshing, during the course of your efforts, which I know were considerable, that the issue did not become politicized as a result of the work that you did, that there were no leaks.

I would say, given my short time here in this institution, it was unusual, but it reflected well on both of you and you brought great credit to Congress as an institution by your conduct and other Members of the Select Committee.

I just wanted to say that, and one other item. Tomorrow, listening to my colleagues on the Subcommittee, in the same room, this happens to be a Subcommittee room usually utilized by the Intellectual Property Subcommittee of the Judiciary, that Subcommittee I also serve on, and we'll be dealing with the issue of encryption.

That, I think, last year, had in excess of 250 co-sponsors; co-sponsored, again, in a bipartisan way between the lead co-sponsors being Representative Goodlatte and Representative Lofgren.

I think really what we're talking about is whether Mr. Manzullo very accurately and articulately described as this need to, at some point in time, resolve this anguish we have, and I know it's a difficult balance between our security concerns and our need to be competitive internationally. And I dare say that when we pick up the barons on a monthly basis and discover that our trade imbalance is ever increasing, that we have to keep that in mind, because the one account where we have the advantages in the high tech area—and I just want to make that observation without reaching any conclusions.

But, again, to both of you, congratulations on the work that you did.

STATEMENT OF THE HONORABLE ILEANA ROS-LEHTINEN, A U.S. REPRESENTATIVE OF CONGRESS FROM THE STATE OF FLORIDA, CHAIRMAN OF THE SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE

Ms. ROS-LEHTINEN. Thank you so much. We're so pleased to have before our Subcommittee two of our colleagues. Representative Chris Cox is the highest Ranking Californian in Congress. He's Chairman of the House Policy Committee and the fourth Ranking Member of the leadership, behind the Speaker. He currently serves as Chairman of the Select Committee on U.S. National Security and Military Commercial Concerns with the People's Republic of China, as well as on the Committee on Commerce and its various Subcommittees.

Before he was elected to Congress in 1988, he served as Senior Associate Counsel to President Reagan, advising the President on a broad range of policy matters, and prior to his White House career, Congressman Cox, along with his father, a retired publisher, founded a company that provided a complete English translation of the former Soviet Union's leading daily paper.

From 1978 to 1986, he specialized in Venture Capital and Corporate Finance with the International Law Firm of Latham & Watkins, where he was a partner in charge of corporate development and a member of the firm's national management.

Representative Norm Dicks is a former Vice Chair of the Select Committee of the U.S. National Security and Military Commercial Concerns with the People's Republic of China. He received a rare first-term appointment to the House Appropriations Committee and currently serves as a Senior Member.

He is a Member of three Appropriations Subcommittees, including Defense Military Construction and the Subcommittee on the Interior, where, this Congress, he became the Ranking Democratic Member.

Prior to his successful run for Congress in 1976, Congressman Dicks was a legislative assistant and later AA to Senator Warren Magnuson.

We welcome you both. Thank you. Chris, you may begin.

STATEMENT OF THE HONORABLE CHRISTOPHER COX, A U.S. REPRESENTATIVE OF CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COX. Thank you very much. I certainly feel very welcome here and I want to first thank the Chairperson for her introduction and, also, immediately recognize that Mr. Manzullo has put the potato on the fork for us. That is the issue that we've got to deal with today.

I deal with it, as Mr. Delahunt does, in part, by having signed on as original co-sponsor of the bill that you're going to consider in here tomorrow on encryption. Nothing that I have seen as Chairman of the Select Committee, which completed its work prior to the commencement of this Congress, caused me to be anything other than enthusiastic for that piece of legislation.

The Select Committee, as you know, was established a resolution that you all voted on the floor last June. It was a nearly unani-

mous vote in support of investigating matters that had been brought publicly to the attention of the Congress.

Mr. Bereuter, who is not here, but is a Member of this Subcommittee, as well as the Full Committee did a splendid job serving as one of the Members on this Committee.

As Mr. Delahunt pointed out, our report was unanimously delivered. Norm and I don't agree on everything. We didn't during the pendency of our Committee. The same could be said for every single Member on the Republican and Democrat sides. We have intramural, as well as interpartisan disagreements. But we agreed on everything in our report and all of its recommendations and we did so because the facts that we uncovered in our investigation are compelling and they carry grave consequences.

The Export Administration Act figured in our recommendations. The Act, as several of you have outlined in your opening statements, long since expired. It's been carried on after some brief extensions in 1993 and 1994, under the President's Executive order authority, pursuant to IEEPA.

The penalties, as you have also alluded to, under IEEPA, are significantly less than those that were enforced when we had an Act and that would be enforced if we simply reauthorized the Act.

I'm used to playing with accompaniment.

The Export Administration Act carries a maximum criminal penalty for an individual of $250,000 and up to 10 years in prison. But under IEEPA, the maximum penalty is just one-fifth of that, $50,000. The maximum criminal fine for an organizational violator, and typically we're dealing with firms that are involved in these things, is the greater of $1 million or five times the value of the export, under the Export Administration Act; not treble, but quintuple damages. But under IEEPA, the maximum fine is only half of that $1 million base or $500,000 for an organization and there is no quintuple, treble or any other multiple of an export fine.

The civil penalties, likewise, $100,000 under the Export Administration Act, but the maximum of $11,000 under IEEPA, and you can imagine how silly it is to have an $11,000 penalty for something that requires Federal prosecution even to bring to the penalty phase.

So we on the Committee recommended what came rather clearly and obviously to all of us, and that is that Congress ought to restore the Act and its penalties, because, as Mr. Menendez pointed out in his opening remarks, to a substantial degree, our enforcement is rendered toothless.

Licensing procedures are governed by Executive order, dating back to 1995. The established time lines for processing export license applications and reviewing departments and agencies and procedures, resolving differences among the agencies regarding the disposition of license applications, are all covered by EO–12981.

Presently, under that regulation, the Defense Department has only 30 days to provide a recommendation to Commerce, not the Committee, but the department, to approve or disapprove every license application, no matter how complex. And I can tell you that right now we are disserving both the national security interest and our commercial interest by overloading that system. It doesn't work and it is very, very easy to imagine ways to improve upon it.

The Select Committee recommends that the current licensing procedures be modified to provide longer review periods, when deemed necessary by a reviewing department or agency on national security grounds, in light of the volume and complexity of licensing activities.

Presently, when departments and agencies are not in agreement regarding a license application, the Commerce Department makes the final decision on every license, subject only to appeal by other departments or agencies.

The Select Committee recommends approval of a license application that requires a consensus by reviewing departments and agencies, subject to appeal procedures.

The new procedures and deadlines for processing Commerce Department Export License Applications were instituted in late 1995. They place National Security Agencies under significant time pressures. Commerce officials acting alone are less likely to have the expertise for identifying national security implications of export of militarily useful technologies.

While National Security Agencies may be informed of applications, due time is needed for their consideration. The time-frame for consideration under the current system is not always sufficient for DOD to determine whether a license should be granted or if conditions should be imposed.

In addition, the intelligence community has sought a role earlier in the licensing process in order to evaluate the technology and the end user.

The Select Committee recommended that Congress and all of you here in this Subcommittee work to establish a mechanism to identify on a continuing basis those control technologies and items that are of greatest national security concern. With respect to those technologies and items, it is our recommendation that there be longer review periods and a consensus.

But with respect to other currently controlled technologies and items that are not of greatest national security concern, currently licensing procedures should be modified to streamline the process and provide greater transparency, predictability and certainty.

There has been some public comment, press comment and television comment on the recommendations of the Select Committee. I hasten to add that the Select Committee has not issued its recommendations and what is out there is only part of the picture.

In particular, several of our recommendations, bearing directly on what you are considering, are more fully and understandably described in our report, which presently remains classified. Even more importantly, the basis, the reasons for those recommendations remain classified, and so it's impossible to have a dialogue or a discussion of, on the one hand and on the other hand, about these things, so long as that classification remains in place.

Tomorrow, Representative Dicks and I will brief your Full Committee in a closed session so that we can go into those reasons, but for today, of course, we are in open session and so we are left with only the highest gloss on our work.

But we very much appreciate the time to introduce you to our thinking on the subject. I would yield to the distinguished Ranking Member on the Select Committee, Mr. Dicks, with respect to whom

I have the very same high praise that Mr. Delahunt shared with us a moment ago.

STATEMENT OF HONORABLE NORMAN D. DICKS, A U.S. REPRESENTATIVE OF CONGRESS FROM THE STATE OF WASHINGTON

Mr. DICKS. Thank you, Madam Chairperson. I appreciate being here today and I have enjoyed very much working with Chris Cox on this important subject and I was pleased that we were able to come to a unanimous conclusion.

Obviously, there are differences of opinion on certain of these issues, but we tried to work it out in a way that, in the midst of the impeachment proceedings, to try and demonstrate that Congress could work on a serious issue without necessarily breaking along partisan lines, though we certainly had our differences.

I would just say that I come from Washington State and there is no state in the country—we lead the Nation in export because of the Boeing Company and I have always been a person who has believed that we needed to have a policy of engagement and that we needed to trade with the rest of the world, and my record in Congress has been that.

On the other hand, I would just say to my good friend Mr. Delahunt that there are differences of opinion on the issue of encryption. Washington State also is the home of Microsoft, a very important company in our State and they have a very definite view on that.

The Intelligence Committee, last year, on a unanimous vote, all 17 Members, took a position very different from the Goodlatte legislation on the basis of law enforcement equities, particularly those of the FBI, and Mr. Louie Freeh has very strong views about this and I would encourage, in your deliberations here, that you listen to what he has to say, as well, because there are very important national security and foreign policy reasons for looking at this thing carefully and trying to get the rest of the world to look at this issue carefully.

But that's not what we're here about today. I just wanted to make a very brief statement. I appreciate the opportunity to appear with the Chairman in support of reauthorization of the Export Administration Act.

As Mr. Cox has indicated, the Select China Committee felt strongly that continuing to implement export control through the emergency authorities, which have been in place since 1994, was unwise. Chairman Cox noted that the penalty authorities, both civil and criminal, under the International Emergency Economic Power Act, IEEPA, were substantially lower than under the Export Administration Act of 1979.

Even if it were possible simply to reinstate the EAA penalty levels, sufficient correction would not result since the effect of those levels has been seriously eroded by two decades of inflation.

If penalties are to be of assistance in conforming behavior, they must be meaningful. Currently, deterrence is not enhanced by the available penalty authorities. I understand that there are authorities other than those related to penalties which are either re-

stricted or susceptible to being questioned under the existing export control framework.

Resolving those matters is important, but perhaps not as important as having an Export Administration Act reauthorization serve as the basis for a serious debate within Congress and between Congress and the executive branch about export control policy.

Much has changed certainly since 1979, but even since 1996, when the House last voted on export control issues, I think we need to carefully consider how to balance best national security concerns, particularly on dual-use items, with the legitimate concerns of U.S. businesses seeking to sell their products overseas.

I must say that our Committee struggled with this, too, because I think all of our Members are very concerned about allowing the United States to export around the world. At the same time, we want to be very careful that sensitive technologies not be inadvertently turned over to potential adversaries, especially with the problem of proliferation, in that some countries get these technologies and then they go on to other countries which could be even more dangerous.

So we think this is a very important issue. It's one that we struggled with and debated, but I thought that the recommendations that we made were pretty solid and I would hope that, as we get this thing declassified and we can share more of this information with you, you will see the basis for the recommendations that we did make.

On the subject of high speed computers, we know that's a very sensitive issue. We know that that's very important to our country, as well. There were some reasons why we did what we did, that we simply can't talk about in this particular forum because of classification levels. But at some future point, we want to engage everyone, so that you can have the best information and you can see what we developed and then draw your own conclusions.

Thank you very much.

Ms. ROS-LEHTINEN. Thank you so much to both of you gentlemen. I just have two questions and if you could stick around for a few minutes while the Members ask, and we understand the classified nature of your report. So whatever you could answer would be great.

Your report includes recommendations for current licensing procedures and you talked about it in your presentation to be modified in order to provide longer review periods when deemed necessary for controlled technologies and for items of greatest national security.

What specific recommendations would you offer? What items would you consider to be in that category of greater national security concern and do you believe that any reviewing agency should be able to ask for a longer review period or should it be limited to a specific longer review period, and what happens if what you talked about, Chris, about consensus, if it cannot be achieved, as is so often the case in the governmental infrastructure, what would happen?

Mr. COX. Well, Madam Chairman, our approach would do two things. First, it would attempt to separate out those items that we know are the subject of espionage, that are the subject of collection,

that are the focus of military acquisition by countries of concern and countries with proliferation records, from our standpoint.

The second thing that it would do is take that core, which is a subset of what presently now is controlled, and essentially go back to the system of a few years ago, where not just the Commerce Department, but also the State Department and the Defense Department, and I would, for a variety of purposes, which to include somehow in that mechanism the Intelligence community, have not just a heads-up, but an opportunity to be involved in a meaningful way.

We have said two things. First, we want longer review times for those essential things and, second, we want a fast track for many other things. We're in many ways, in many respects, always trying to fight the last war, and the same can be said about the way that we run our exports.

But as I said in my opening comments, the present system is the worst of both worlds. It is woefully inadequate when it comes to protecting our national security. It is woefully inadequate when it comes to giving us a competitive edge vis-a-vis our trading partners, because the process chews up time and all of that time and paperwork doesn't result normally in the kind of quality review that it should.

So we need to decide what we really care about, put more resources there, and focus attention on our real national security concerns.

Ms. ROS-LEHTINEN. Thank you. Norm?

Mr. DICKS. Basically, what we tried to say was that there ought to be a way to make a judgment here about which of these items are of the most concern, take a little more time on those, and the ones that are of less concern, then you could have an expedited procedure.

Now, we left that up, frankly, to the Administration to decide at what point you'd make that cutoff.

The other thing is, I think a thorough review of the timing process here and whether agencies can stop the clock, how that's done, those are the kind of things that we think are necessary.

We also think that there ought to be consensus on issues that are sensitive on national security grounds rather than allowing for a majority vote process which, as we understood it, currently exists. So those are just a few of the things that we felt. But we also felt that in areas that were less sensitive, we ought to have an expedited procedure.

We don't want to hold up industry here, but we want to be careful, because there was some indication that there were times when, a little more time, we might have ascertained that we had a problem and that the agencies felt, the Defense Department and the State Department felt rushed on some of their judgments about certain sensitive technologies.

Ms. ROS-LEHTINEN. In order to meet those——

Mr. DICKS. To meet time lines.

Ms. ROS-LEHTINEN. One more question. Should reauthorization of the EAA wait for the results of the investigation by various agencies into the adequacy of current export controls that would protect against the acquisition of militarily sensitive U.S. tech-

nology by the PRC or by other countries and how would an EAA protect against the foreign acquisition of such sensitive technology by other countries?

Mr. COX. Well, our investigation is, in fact, complete. Our existence presently is solely for the purpose of working out with the Administration a declassified version of our report, but our staff, which once numbered 45, is now to about a half dozen now and we are working only on making the report available in public form.

And so for Members and for the Congress, it is possible now to see the results of our report and to see our recommendations. The EAA, therefore, should not await any further proceedings from this Committee, but perhaps there is other information that you'd wish to have before you proceeded in the Subcommittee.

I would also say, in answer to the second part of your question, that reauthorization of the Export Administration Act gives us an opportunity to protect the national security and to enhance our export position and our competitive position in the world, because it will, by definition, if we do a good job of it, be a modernization. And the Act, in addition to bringing penalties up to date, needs some modernization, as we indicated in our recommendations.

I stated, rather elliptically, that the Intelligence community wishes to be brought in earlier and that we think the Intelligence community ought to be brought in earlier, but we did not recommend that the Intelligence community be one of the reviewing agencies, the consensus of which is required. Rather, we made a separate recommendation in our report that within the executive branch, the Intelligence community share information with those people who have responsibility for export Administration.

We found not just evidence, but serious problems because information about theft of our technology was not shared, for example, with the Secretary of Commerce or the entire Department of Commerce that's responsible for administering our export regime. That simply cannot stand.

Ms. ROS-LEHTINEN. Thank you, Chris.

Mr. DICKS. I support the Chairman's comments here. I don't think there is any reason to hold up. Frankly, I think the fact that we didn't have an Export Administration Act may have sent the wrong signal to the business community.

Part of the problem here, frankly, is that there were some mistakes made by major companies in terms of the licensing process and those things are being investigated by the executive branch.

There was kind of an attitude that we're going to relax the rules a bit here and that's when we get in trouble. When the private sector, if they know what the rules are and know that the government is going to enforce those rules, then I think they'll abide by them and respect them. And in this case, there is evidence that there were problems there.

So I think quite the contrary. I think getting on with this, get this thing done, sends a very powerful message that we're serious about this subject matter and we want them to be.

Ms. ROS-LEHTINEN. Thank you so much. Mr. Menendez.

Mr. MENENDEZ. Thank you. Let me just—I want to pursue just one line of questioning which I think is within the public purview,

and that is on your recommendation of having a—requiring a consensus for the agencies in the license approval.

Now, some people have characterized this, including the Administration, as suggesting a return to the old system which resulted in licenses sometimes just being vetoed without adequate cause; in short, a system in which everyone could say no, but no one could say yes, and a process which did not serve the dual interests that we've all talked about here today.

Can you give us a sense of why you think that that recommendation versus the Administration's current default to decision process is a wiser one and where, my understanding is, under the present process, dissenting agencies can raise their objections all the way up to the President.

My concern is that we can have a situation here in which there is a virtual one agency veto in this process and I'm not quite sure of the appeal process you all laid out, to the extent that there is one.

I'm wondering, is there any case in which an agency's concerns were not adequately considered through the current process.

Mr. COX. Well, the answer to the last question is easy. The answer is yes. There are a number of examples of mistakes being made and it isn't so much a case of the formal process not being observed. Rather, it is the cumbersome nature of the current or the post-1995 process in which there was a theoretical appeal to the President, but in which, frankly, trains left the station and national security was not looked after.

I said earlier and I want to reemphasize that this system shortchanges both national security and our commercial interests. It is hurtful to both of them. The notion is that if we let Commerce be the final say on these things, that we will vindicate our commercial interests, but in truth, we haven't done that. In truth, there have been delays. In truth, there has been a lot of paperwork. In truth, a lot of focus has been placed where it ought not to have been placed and things that ought to have been looked at after were not looked after.

So we can say that while there is an attempt made to resolve the different interests by placing one or another agency in charge, in this case, Commerce, that we have caused some rough justice, but rough justice ought not to be what we're after here.

The law of averages isn't good enough. If sensitive technology is exported, it doesn't take but a few times for that to come back and bite you. You want to make sure you're looking where you're supposed to be looking.

So I think we can do a much better job than presently we do and I don't think there is any question that you don't resolve these issues by saying that Commerce is going to be king or national security is going to be king. That's not the way to go about it.

Mr. MENENDEZ. And that's not my sense of it. My sense of it is that through a process in which any agency—in my understanding, there is no agency that has ever sought an appeal up to the President. So I'm not quite sure how it is that it didn't work if people had an appealable process. But my concern——

Mr. COX. That's precisely my point. That point was made many times in——

Mr. MENENDEZ. My concern is, how is it that—you know, we can all sit in a room and we can be locked in and at the end of the day, one of us may just simply not agree, and how do we go beyond that. I mean, that's my concern.

I understand we want safeguards, but I'm just concerned this is overly broad.

Mr. DICKS. As you can imagine, trying to do all this in 6 months, we had to be kind of instant experts in some areas and I would characterize this as one of them.

In fact, I think on this question, this is something your Committee should take a very careful look at. We've raised the issue for you. I think you need to look at this and work out a process that you think protects national security and, at the same time, allows these decisions to be made.

I do believe we have an appeal process that would raise this to a higher level of authority if there wasn't a consensus. So the lack of consensus wouldn't mean you wouldn't get a decision. It would just have to go up to a higher authority, which, under the present procedure, would have—the same—the difference was that, as we understood it, there was a requirement for a majority vote.

We felt that if the Defense Department or State Department were outvoted, here you've got the national security issue not being maybe given the credence.

Now, they obviously could have raised it in an appeal to a higher level. But I guess my urging here today would be take a real careful look at this area. This is one that needs attention and when you have more time than we did, I think you, frankly, can do a better job.

Mr. MENENDEZ. Thank you.

Mr. COX. One final point, if I may. As I said earlier, the other agencies, the National Security Agencies, under that system introduced in late 1995, were pressured for time. So while there is a theoretical appeal, there isn't necessarily preparation for that appeal.

If we have a lot of time to look at everything in a fulsome way, we're probably looking at too many things, by the way, and so we want to circumscribe that universe that gets this special attention.

But we know if we bring to bear the significant intelligence information that we have, we know that we'd be wise to spend our time in certain areas as against certain other areas. And at least in those areas where we face significant threats, we would like to see some national security input at the front end and not time-limit it arbitrarily.

Mr. MENENDEZ. It's interesting how you said it, because in 1996, when the Congress voted on this, both the National Security Committee and the House International Relations Committee moved in a different way, which was to shorten the time periods, not lengthen them.

So I think these are two of part of a very significant serious——

Mr. COX. Which we also are recommending. That's a very important part of our recommendations. We have recommended a fast track for a significant number of these things.

Ms. ROS-LEHTINEN. Thank you so much. Mr. Manzullo.

Mr. MANZULLO. Thank you. I read the report and I want to commend you for the work that you did on it. Let me present to you a live scenario and see how you would fashion the re-write of the Export Administration Act to it.

As I said in my opening statement, any computer with MTOPS in excess of 2,000 to be sold to a tier three country would have to have a validated export license. The new Pentium chip, Pentium 3, has 1,200 MTOPS. IBM, the new IBM PC will have two of those chips. That's two times 1,200, that's 2,400 MTOPS. The Dell workstation will also have two of these, that's 2,400 MTOPS.

Those two companies supplied the BXA last year for about 300 sales to tier three countries. This next year, it's estimated that there will be 34,000 applications before BXA in order to sell these computers.

How do you re-write the Export Administration Act to make sure that our computers are sold to tier three countries as opposed to these tier three countries buying the very same machines, possibly manufactured by our own manufacturers overseas, because of presence of foreign availability?

Mr. COX. Two points. First, you would have a remarkably difficult time writing the Export Administration Act if you had to include an MTOPS level in the statute. That is not where the requirement comes from and it has to be adjusted from time to time because of the pace, rapid pace of development of this technology.

All that we require from a national security standpoint is to keep a technological lead in weapons development and deployment and, second, to make sure that we are not shipping tools and, for some purposes, computers are tools, that are used in ways that are otherwise preventable to deploy and proliferate weapons of mass destruction.

So you're left with the problem. It is a subjective problem. It's one that probably the Act cannot satisfactorily address in the statute. It hasn't in the past. But you're also guided by some general principals and we will be able, as Representative Dicks mentioned in his opening remarks, tomorrow, when we go into closed session, talk to you explicitly about our recommendations in this area and the reasons for them.

There are some very, very explicit things that you need to know about.

Mr. MANZULLO. Mr. Dicks, did you want to comment on that?

Mr. DICKS. This was one of those areas where there was a lot of angst and we struggled with this. The problem here is that at the low end, you're absolutely right. There are all these other countries that produce these. As I remember the numbers, it's under 7,000 that can be exported for non-military purposes.

One of the things that we did feel strongly was that there has to be some ability to do meaningful end-use verification to make certain that if they bought these things and said it's going to the cultural or the academic institute, that these things don't wind up being used for other non-allowed purposes.

So we understand the difficulty of getting this done. In fact, the Administration has attempted to try to set up an end use regime and that's something that you may want to look at as well here.

I do think there are some questions as you get to the higher levels where, in fact, you're going to have national security problems and that's one area where you need to get the intelligence information.

Mr. MANZULLO. The M top levels were written into the Defense authorization bill. At 2000, we're frozen. We're frozen with this. This is something—it's not a matter of taking a look at. I think technology has out paced much of the need for these types of restrictions. When Cray tried to sell their super-computer, which is a computer which just does regular functions at a faster speed, to India, the licensing requirement took so long, India did reverse technology, made the computer, canceled the contract and started exporting elsewhere.

And I don't care if it's with computers or if it's with communication satellites or if it's with machine tools. This problem is endemic because I think what we should start with, re-writing the bill, is with foreign availability, then work backwards on it.

Mr. DICKS. That's going to be your challenge and you can take a look back and forth, and good luck.

Mr. MANZULLO. Thank you. Thank you, Madam Chairman.

Ms. ROS-LEHTINEN. There you go. That's what you get for putting the potato on the fork. Mr. Delahunt.

Mr. DELAHUNT. Yes, thank you, Madam Chairman. I want to go back to the—I had the same question that Mr. Menendez put forth in terms of the consensus issue. Given the inherent condition of bureaucracies to require a consensus raises a level of concern.

It's as if it were a veto, if you will, and raises a level of concern with me that it would really encumber this process.

To pick up a point made by Mr. Cox, if you brought in—and I don't know whether, in your opinion, this would obviate the need for the consensus, but it's my understanding that historically the intelligence community has never played a role in this review and process.

And if they were factored in at an earlier point in time, at the beginning, if that could be the case, I just simply don't know, would——

Mr. DICKS. On that point, just on that point.

Mr. DELAHUNT. Sure.

Mr. DICKS. Both the State Department and the Defense Department have the benefit of intelligence information as they make their recommendations.

Mr. DELAHUNT. But I think what Mr. Cox was alluding to was to have actually representatives from the intelligence community there participating at an earlier stage in the process itself.

Mr. COX. But in the manner that Mr. Dicks just described, our Committee's concern was that that process, which was supposed to work that way, isn't functioning that way and information that ought to have been shared with the State Department, with the Defense Department and the Commerce Department and so on was not.

Mr. DELAHUNT. Well, let me ask both of you. If it worked, would that obviate the need to, in your opinion, to have this consensus process?

Mr. COX. We did not suggest an extra seat at the table for the intelligence community, requiring their explicit consensus, and we think it can work through the other cabinet departments.

Mr. DICKS. If you have a need for consensus and there isn't consensus and you can raise it to a higher level of authority to get a decision, to me, that sends a message to the higher level authority; they could not reach a consensus here, but now we have to decide this and you get the Assistant Secretaries and then the Deputies and then it goes to NSC and finally to the President.

To me, that makes sense, something like that makes sense.

Mr. DELAHUNT. I hear you, but I think Mr. Manzullo is right and, again, I'm just concerned that these various agencies, innately conservative as they are and not wanting to be vulnerable to unfavorable public exposure at some point in time, are going to say, well, when they sit down among themselves, hey, let's nix this one. They can appeal.

And we find ourselves, in terms of competition, as Mr. Manzullo indicated, the technology is moving so rapidly that I'm concerned we're going to lose our competitive edge.

Mr. COX. If I may say so, this gets awfully easy if you're using a Pentium computer as your example. Paperwork that slows down the export of PC's is, I hope, a straw man. We oughtn't to be in favor of that.

But I will say that there are plenty of examples in the current regime where things that ought to be no-brainers are slowed up and that's the problem. The problem is we are shortchanging both the national security and our commercial interests and, therefore, you are right to focus on behavior by people who work in the system.

How do they really work? One of the problems that we observed is that at the Commerce Department and at the State Department, the staffing is inadequate.

Mr. DELAHUNT. That was going to be my question.

Mr. COX. First of all, they're undermanned, they're under-powered, and the people in many cases lack the training that they need in order to carry out these responsibilities.

Congress is uniquely situated to address these problems and we hope that that's one of the things that we can do, put resources to bear and also do it wisely. Don't have an army of people looking at things that don't need that kind of review.

I agree, for example, with Mr. Manzullo that we can be sensitive when we set up—whether we even want to use M top levels forever, because there are some shortcomings with that measure, as you know, whether we can set up flexible systems that can change those standards as need be.

And you are right that on one occasion, Congress did, for tier three countries, write the standard into law. I think that's a mistake. Fortunately, there, is an opportunity for the President to change that, although he has to notify Congress first, but that's the only occasion when that's happened and I think we ought to, when we re-write the Export Administration Act, keep the system of doing it by regulation.

Mr. DICKS. Another possible way, as we said, we think there ought to be a division between those very sensitive items and the ones that are less sensitive.

You might just have consensus required on the most sensitive one as one way to make sure that national security is protected. That's one way you might deal with this.

Mr. DELAHUNT. The problem is drawing the line and writing that into statutory language. I don't see how we do it.

Mr. DICKS. Well, you might give that responsibility to the Administration and then have oversight.

Ms. ROS-LEHTINEN. Thank you. Mr. Chabot.

Mr. CHABOT. Thank you. Chris, you mentioned in your testimony that right now the Defense Department has to respond in about 30 days. Is that correct?

Mr. DICKS. We think that's the answer.

Mr. CHABOT. I thought you said basically that it goes to Commerce and the Defense Department has 30 days and they're saying they need more time essentially to review these things. My concern was that there are some things that I kind of——

Mr. DICKS. They can be extended, too. I'm advised that whatever time-frame it is, it can be extended if they've got a real heartburn problem.

Mr. CHABOT. And my concern for the idea of extending times, although I'm certainly willing to listen to this and I'm sure that's one of the reasons we're having these hearings and discussing the whole issue, is that I basically believe that bureaucracy by its very nature will have a tendency to expand to whatever time you give it, just as government has a tendency, I think, to expand as large as you'll allow it to.

I believe that if we leave a lot of the money from the surplus here in Washington, we'll spend it, and that's why I'm for tax cuts, just basic beliefs that I have.

But I'm just wondering how do you make sure that if we expand that time that the Defense Department has to review these things, that it doesn't basically get kind of put on the back burner. I mean, it happens in offices all the time where you have to do something within a certain amount of time. You'll take the time. You need to do it. But if you know you don't have to do it for a certain period of time, you have a tendency to put those things off.

I'm just wondering. And as has been mentioned here, some of the technology advances so rapidly and companies want to do the sale and if the U.S. company can't get it done, then it's going to go to some French company or something else is going to happen.

So I'm just wondering how you address just bureaucracy's tendency to take up as long as you'll give it to accomplish a given task.

Mr. COX. As we were just discussing, first of all, you need to improve that bureaucracy. It is, at present, inadequate. It is both under-powered, undermanned, and under-trained. If you don't have the right people looking at these problems, then any length of time is going to be inadequate.

But you also have to have enough people to do it. The testimony that we received concerning the average backlog of the average person working on these things is enough to lead you to conclude the whole system is an accident waiting to happen and that there is

a great deal of happenstance about whether or not a review is adequate.

So that for the price of being held up while in the midst of competitive bid overseas, a firm might have done nothing to contribute to the national security, and that shouldn't be.

Mr. DICKS. Let me just read you a couple of sentences out of the report. This is the Administration's response, but I think there is a better understanding of what has just been discussed.

In fact, agencies, on average, consistently conduct their reviews in less time than they are permitted by current Executive order. Existing procedures also allow for time extension, when requested. For example, a request by an agency for additional information about a license application stops the clock and agencies also have found that they can obtain additional time for review by escalating cases.

However, we believe that allowing an agency to stop the clock indefinitely would return the dual-use licensing system to the days of unjustified delays that the executive branch and the Congress worked hard for over a decade to reform.

So at least at the executive branch, I think there is some sensitivity to this and, again, I think this is, not shifting the responsibility, but our investigation is over. You're going to now have to take what we've said and what the Administration has said and listen to all these very impressive witnesses out here and make up your mind about whether you think the existing system works and should be changed or not.

But we just want you to know that we think that there are some areas of very sensitive matters that may need additional time and we don't want to close that off.

Mr. CHABOT. Thank you very much.

Ms. ROS-LEHTINEN. Thank you. Mr. Sherman.

Mr. SHERMAN. Thank you, Madam Chairwoman. So far, we've been focused on the procedural standards, which agency will have to give its consent, consensus, the length of time. I think we also need to focus on whatever substantive standards we provide.

Not that we can fix them in stone and certainly we're not going to be the ones to apply them. The technology is changing too quickly. But I hope that we will direct the agencies to look at whether certain items could be exported and we could still protect our national security interest by taking particular procedures or requiring them to be taken by the company involved.

For example, if we're concerned about satellite technology, not rocket technology, but the technology to build the satellite coming into Chinese or other potentially unfriendly hands, that we would require perhaps U.S. Government employees to be in physical control of that satellite until it was in outer space.

I hope, also, that we will direct the Administration and all the various agencies to ask the question not only is this device potentially helpful to a potential adversary, but, also, can that potential adversary or other country that we don't have total faith in obtain the technology from another source, because we should not be punishing American workers for the fact that—I'm going to mispronounce the name—Wassenaar hasn't been an overwhelming success and it is up to our State Department to negotiate with

other developed countries mutual limits on exports rather than punish American companies and workers.

For example, I see a situation where we're dealing with encryption where the same encryption technology, and you gentlemen may know more about this than I do, seems to be available from dozens of other sources outside the United States, and yet we persist in limiting its export.

There was some comment about the budget of those who administer our export program and I don't know if this was within the purview of your Committee, but perhaps you should comment on whether we've adequately appropriated funds and whether we should be imposing additional fees in order to make it more of a self-funding program.

Mr. COX. Well, your recommendation with respect to the protection of satellites is almost to a T what we recommended in our report. There are some very concrete and simple and understandable steps that our government can take and that Congress can take to make that broken system work.

But, frankly, to a degree that even people in industry did not appreciate, the system that we all thought we had is not the one that actually we have had. And, therefore, we're all in agreement that that's the system we ought to have. It's just a question of putting it in place.

Your comment with respect to Wassenaar is also right on the money. When a company comes to you, as a Member of Congress, and says Congressman, if we don't sell that, then Germany is going to, more often than not, that's correct.

It didn't use to be so, but in 1994, the United States led the agreement to disband COCOM on the theory that the cold war was over and we didn't need a multilateral regime any longer.

But the truth is there are other different threats, if not the Soviet Union, indeed there is a very related cognate, the problem that presently we face with Russian proliferation, if not Russian accidental launch.

Yet we have completely unilateralized the regime and you were right to say that Wassenaar has not worked in that respect. It has not and one of our recommendations is that the executive branch lead an international effort to increasingly multilateralize this effort, so that self-abnegation is not required.

Self-abnegation doesn't even work. It amounts to nothing more than that and is a further example of having the worst of both worlds continuing to do nothing for the national security and, at the same time, disadvantaging our competitive position in world markets.

Mr. SHERMAN. I would add that you also provide the financing and the incentive for those foreign competitors that might be a few months behind us in developing militarily useful technology to then move equal or ahead of us in that technology, since we provide them with markets, with needs, and with capital that gets the genie even further out of the bottle.

I don't know if either of you have a comment, though, on——

Mr. DICKS. Let me just make one brief comment. I think there would be a little difference in the review of history here about COCOM. I think the Administration and others would say that a

number of allies wanted COCOM to be ended and the United States resisted that for a significant period of time and then finally it acquiesced to it, I guess.

The second point is that the strengthening of the new agency is a prerequisite of our recommendation.

Mr. SHERMAN. What about the funding of our administrative enforcement and licensing department?

Mr. COX. I think we both agree on that. As we've said several times, we've got to make sure that we have adequate resources to do this job.

If you're going to have a regime of export Administration, you can't do it only partially.

Mr. DICKS. And we saw some major problems in defense and made recommendations about that and the strengthening of DITSA, the agency that is supposed to overview this when you're dealing with a satellite. Also, there is probably some help needed at the State Department, frankly, to go through these applications.

Mr. SHERMAN. I want to thank the Chairwoman for not having those green and yellow lights.

Ms. ROS-LEHTINEN. They're not working. I wish I did.

Mr. SHERMAN. Noticing that my time has not expired.

Ms. ROS-LEHTINEN. After my questions, of course, that's when I would put them on.

Mr. SHERMAN. Focusing, again, on the satellite issue, I just want to comment that there was a report in the Washington Post that Hughes was being punished by the State Department for daring to come to Congress and advocating that the turf for licensing satellites be vested in Commerce, and I hope very much that that report is inaccurate.

I would hate to think that a particular company faces tougher scrutiny. I mean, there are other things Hughes did for which tough scrutiny might be called for, but the idea that they would be faced with tougher scrutiny because of their political position here before the Congress seems absurd.

I would also point out that if the whole China satellite concern was not about the satellites, but was about the rocket, and there the problem we had was that U.S. entities had an economic incentive to evaluate and even an economic incentive to correct the Chinese space launch capacity.

I would point out that U.S. companies, I think, are still free to ensure launches from China. No technology is being exported there. And yet that would provide the same kind of economic incentive, could lead to the same kind of post-disaster insurance investigation with the same risk of communication through investigation.

And that the focus may not be on where the satellite is built, but rather making sure that no U.S. entity involves itself in asking questions of the Chinese as to why their rocket was unsuccessful or why it wasn't more successful, because asking questions is a way that it inevitably conveys information.

I want to know whether your Committee is focused on preventing the reason for U.S.-China communication about their rockets and prevent outlawing that communication or whether the focus is just on whether a U.S.-built satellite is going up on a Chinese rocket.

Mr. COX. The former and not the latter, notwithstanding our vote in the House, it was not the recommendation of our Select Committee that we outlaw foreign launches. Rather, we wanted to make sure that the promised regime of security is, in fact, delivered.

I would also say that we recommended that—and found that it is in the national security interest that the United States increase its domestic launch capacity. But here we had no silver bullet and if you can define ways to do that in addition to the very general things that we discuss in our report, you will have advanced the ball greatly.

But nobody disagrees with this, of course, but it was not essentially the focus of our Select Committee. Nonetheless, were we to have expanded launch capacity in the United States, there would still be demands placed, for example, by the People's Republic of China, as a condition of purchasing the satellite that we use their launch vehicle, and some of those tying arrangements are trade matters that can be looked at in that context.

Mr. SHERMAN. Mr. Dicks.

Mr. DICKS. The other thing I would point out is that there are major problems with that. When we had several accidents, that there was supposed to be a post-crash discussion that had to be licensed, and then the question of not licensing it is where we got into some trouble.

So this is a discussion—I mean, it's something that we brought up in our report. Obviously, this is under investigation by the Justice Department and it's a very serious matter. But you're right, there is an incentive.

I mean, it's old American know-how. You want to try to help fix the problem. But in these cases, you have to have a license in order to do that and the question is, in these cases, the licenses were not obtained. So this is a serious problem.

Mr. SHERMAN. Madam Chairwoman, I see the red light is on and my time has expired.

Ms. ROS-LEHTINEN. Thank you. Mr. Burr.

Mr. BURR. Thank you. Chris, you mentioned training, understaffing. Let's assume for a minute that we were able to address those needs. Can I assume that you still suggest that there has to be structural changes? And I guess the follow-up would be to Mr. Sherman. He mentioned turf. Do we have a turf war between the agencies who have some piece of the decisionmaking problem?

Is that as much the problem as structure?

Mr. COX. To answer your first question, if we were successful in addressing, and I hope we will be in the short run, the problems of under-funding and under-staffing, inadequate personnel, in the export license review process, we would still have the question of who sits at the table and whose expertise is being tapped in order to make these decisions. And structural reform, I think, therefore, is necessary and should be addressed in the Export Administration Act.

In answer to your second question, of course, there is a turf battle going on. When you have a number of cabinet departments, which, after all, are themselves enormous bureaucracies, there is going to be a turf issue.

I can say, from having served in the executive branch in the White House, that this is not a Democrat or Republican issue; that these are intra-administration issues that antedate the Clinton Administration and there will always be a tug-of-war among national security interests, commercial interests, State Department interests, Pentagon interests, and intelligence community interests, because that's the nature of our Federal system.

And Congress, in its oversight capacity and here in its legislative capacity, has to take these things into account when we design a system that in the end will not be perfect, but that will work better than presently what we've got.

Mr. BURR. Norm, you mentioned the intelligence in put that was available, but not supplied, I think, in some of the things that the Select Committee——

Mr. DICKS. We wanted to make sure that each of the entities share the intelligence information that is available prior to making a decision and we want them to know about these things so that they can have the benefit of that.

Mr. BURR. Had that—based upon your findings, had that been shared to the degree you think should have been appropriate, would some of the mistakes that you found not have happened?

Mr. DICKS. Well, my own judgment is that not all the intelligence was shared and because it was—you know, it happened over a period of time and maybe they just didn't look at it the same way. When we saw it, when we gathered all this information, we could see the picture, and maybe we saw it more clearly than they did.

But we were concerned about that and, frankly, as a person who served for 8 years on the Intelligence Committee and 4 years as the Ranking Member, not all this information was shared with the Congress, as it's required to be under the law. That's another issue that we raised.

But I think it's important for these agencies that are making these issues, especially on the very sensitive issues, to have the benefit of the intelligence information. We want to ensure that that happens.

Mr. BURR. Does the consensus, Chris, that you talked about within this decisionmaking body, would it assure us that the see no evil, hear no evil attitude of possibly one of the agencies won't exist?

Mr. COX. I don't think so. No system is going to guarantee against problems that arise as a result of the people involved. And if you have the wrong people, they will—or if you have people who are the right folks, but they're over-tasked, they haven't had a chance to look at things as they should, you're going to have imperfect results or dangerous results.

And I think it's important to point out that it doesn't much matter, from a national security standpoint, whether you've got someone who is willing to hear no evil or see no evil or who is being tendentious or is not fulfilling his or her responsibility, on the one hand, or if you've got somebody who is the best person you can possibly find, adequately trained and is overworked and operating under unrealistic time constraints, if the result is that something gets sent overseas for military purposes, even though we didn't in-

tend it for that purpose, what's the difference, from a national security standpoint.

I don't care about the motive or how it happened. We just need to make sure the system doesn't operate that way.

Mr. BURR. I thank both of you for the commitment on the Select Committee.

Ms. ROS-LEHTINEN. Thank you. Mr. Rohrabacher.

Mr. ROHRABACHER. Thank you very much. I'm sorry that I was late for this hearing. It seems that I am the Chairman of a Subcommittee on Space and Aeronautics and, by the way, for the last 10 years, I have been pushing to try to bring down the cost of the American space launch and that hearing, what was on reasonable rockets, which is finally coming about, which has something to do with the issue we're talking about today, and there was another hearing dealing with Afghanistan which most of you know that I have been deeply involved with, as well.

Mr. DICKS. We're working on those up in Washington State.

Mr. ROHRABACHER. As long as you're not working on the Afghans up there in Washington State.

People have been dancing around some central questions and I really would like to put them on the record.

The last time we loosened the restrictions and the controls on technology exports, and it was done and, by the way, I went along with it, because I was assured by those people who were advocating this, those people, technology industry giants who came here and gave us their word that not one bit of technology would be transferred, that all these safeguards would take place.

I mean, we were promised this. This was something that was sworn and the systems were going to be back up. The last time we did that, and, of course, we're talking about the situation permitting the Chinese to launch our satellites, did that result in damaging United States national security?

Mr. COX. I'm sorry. Can you——

Mr. ROHRABACHER. Did the last time that we loosened—I mean, I hope I—the last time that we loosened the restrictions by permitting this leeway for the communist Chinese to launch American satellites, did that result, maybe not intentionally, but was the result of that loosening a damage, a severe damaging of our national security?

Mr. COX. Well, only to the degree that Mrs. O'Leary's cow caused the great fire. It was certainly that without which, but I don't know that it was designed in such fashion——

Mr. ROHRABACHER. I'm not asking for any suggestion that somebody intentionally designed this in order to permit weapons of mass destruction technology to fall into the hands of a potential enemy of the United States.

But can we say with certainty—and I think, by the way, this is the part of your report you've already released and I'm just asking you to restate it—that American lives have been put in jeopardy and our national security has been damaged because of the loosening of controls of the technology dealing with satellite launches in the communist China.

Mr. COX. To more fully explain, if, at the time, we had instead passed a law that said there will be no foreign launches in any

country in the world, then, by definition, none of these things that occurred would have happened and that would have been one way to prevent it. I think that would have been overkill.

But it's in that sense that it's a necessary, but ultimately insufficient cause of all that followed. What actually happened was sufficiently complex that you would need to explain it with a number of things, not just Congress' choice there, because our report, as we will be able to tell you more fully tomorrow, describes ways in which the system was abused.

So the system itself can't be fully to blame, except to the extent that somebody was able to take advantage of it.

Second, our Select Committee quickly moved beyond the issue of satellites into things which we all agree were much more grave in their consequence to the national security, and so we're going to direct your attention after a very short of period time beyond that to these other things.

Mr. ROHRABACHER. Mr. Dicks, would you like to answer that?

Mr. DICKS. Let me give you my take on this. First of all, before and after, the United States possesses overwhelming military superiority. I have served for 20 years on the Defense Appropriations Subcommittee. We have 18 Trident submarines, we have three intercontinental bombers, we have 500 Minuteman–3s, and 50 MX missiles.

At the end of the day, after all whatever happened happened here, they have 18 single warhead ICBM's with—and warheads are not made into the rockets. Now, yes, some things happened here that should not have happened.

If this system had worked the way it was designed, there would have been not transfer of technology whatsoever to the Chinese. Because of the post-accident launch discussions, that's where we got into some trouble, and there is a debate about how important whatever that technology was that was transferred was and there's a debate about just how significant it was.

Some people view it as being more important than other people do. Now, I would argue that——

Mr. ROHRABACHER. Chris just suggested it was like Mrs. O'Leary's cow kicking over the lamp.

Mr. DICKS. Let me just say this. There was some inappropriate transfer of technology. But did it change the overall balance? Not in the near term. Now, can it have long-term significance? We'll have to wait and see.

Mr. ROHRABACHER. I guess my question isn't whether the overall balance or any of these other things, everybody is dancing around the question on, but is it that difficult to suggest that we, by transferring technology to the communist Chinese, that they are able to use on their rockets, that damages American security?

I read the official release from your report and you were very clear that that's the case.

Mr. COX. That's why it's easier for you to understand it and it will be easier for us to answer your questions much more directly if we can tell you the facts that we came up with and people can infer then what they wish. But we have said publicly that even with respect to just the four corners of the satellite issue, that in

consequence of those events, the national security was harmed. There is no question.

Mr. ROHRABACHER. Thank you for that direct answer.

Mr. DICKS. It's a question of degree. Again, I don't want us to overreact. I think the worst thing we could do is to try to overstate this. I mean, yes, some harm occurred. Now, was it a catastrophic in this area? I would not say it was catastrophic.

Mr. ROHRABACHER. Mr. Dicks, if, in the future, we come to some sort of confrontation with communist China and some American technology has been used to upgrade the capabilities of a communist Chinese rocket that ends up being shot at the United States, that will be a catastrophe.

Mr. DICKS. Of course it would be, but I—we have lived under a world where the Soviet Union had forces that were equivalent to ours. They were deterred for 30 years because of our deterrent.

So I look at this from a perspective of does it make a great deal of difference in terms of the deterrent. Our deterrent is——

Mr. ROHRABACHER. Mr. Dicks, using your example, wouldn't it be called treason if somebody, during the cold war, would have given missile technology to the Soviet Union?

Mr. DICKS. Of course it would be.

Mr. ROHRABACHER. Of course it would have been treason. But now everybody is dancing around it because this Administration labels communist Chinese as our strategic partners.

Mr. DICKS. Congressman, there was no missile technology——

Mr. ROHRABACHER. I know. It was rocket technology, right, and rockets versus missiles. Missiles, of course, shoot nuclear weapons and they're painted in this camouflage and rockets shoot up satellites and they're painted in pastel.

Mr. DICKS. All I'm saying to you——

Mr. MENENDEZ. Would you yield a minute for a question?

Mr. DICKS. All I'm saying to you is just——

Mr. ROHRABACHER. One moment.

Mr. DICKS—[continuing]. Is just weigh this and look at the facts and don't overreact here. The world that Ronald Reagan helped create and when you two were down at the White House, we still have a very strong military capability. I'm not going to bed worried about what happened here. I don't like it and it should not have happened, but it did not effect the overall military balance.

Mr. ROHRABACHER. Mr. Dicks, we don't have a missile defense system to stop these rockets which Ronald Reagan tried to build, and, in fact, during the cold war, at least with the——

Mr. DICKS. Deterrence worked.

Mr. ROHRABACHER. OK. Yes, deterrence worked with the Soviet Union, which didn't—which really cared about whether——

Mr. DICKS. They had thousands of weapons that——

Mr. ROHRABACHER. Which whether or not the Soviet Union cared about the mad deterrents because they cared about losing 50 or 100 million of their people. The communist Chinese, as we know, may not have the same notion about their own population that the Soviet leaders had.

The deterrence—to help the communist Chinese improve the reliability of their rockets in order—their missiles or rockets or however you want to define it, in order to cheapen the cost and to hold

down the cost of putting up an American satellite, wouldn't you call that, if that would have happened with the Russians, that we actually transferred some of that technology, just to bring down the cost of putting up those satellites, that would have been looked at as highly, let's say, not dishonest, but let's say disloyal to our country?

Mr. DICKS. We probably wouldn't have entered into that kind of a relationship in the cold war with the Soviets.

Mr. MENENDEZ. Would the gentleman yield? Just for my edification.

Ms. ROS-LEHTINEN. Mr. Menendez, if you could go by the Chair, that would be great. Yes. Mr. Menendez.

Mr. MENENDEZ. Well, I'm just asking the gentleman to yield. I think that's within the rules of the Committee.

Are you talking about the decisions made in 1989 by Ronald Reagan and then put into effect by George Bush to go ahead and have launches? Is that the question that you're putting to the witnesses?

Mr. ROHRABACHER. Is that what you're asking me?

Mr. MENENDEZ. Yes. Is that the question that you're concerned about in the context of rocket launches, whether or not that was a right decision?

Mr. ROHRABACHER. OK. Answering my Member's question or my colleague's question, the fact is that Ronald Reagan, you're right in remembering, that before Tiananmen Square and before the communist Chinese massacred the democracy movement in that country, yes, Ronald Reagan thought better cooperation was important and there were restrictions placed on that cooperation.

No. I'm asking what happened when this Administration and the industry today called for Ronald Reagan's restrictions to be lifted and it resulted in what? It resulted in communist Chinese rockets being provided American technology to improve their reliability and their ability to carry payloads and their ability to hit their targets.

This is a catastrophe and I do believe it could be—yes, it could be compared to Mrs. O'Leary's cow. Mrs. O'Leary's cow knocked over that lamp and that cow burned down and killed thousands of people in Chicago.

Well, I would hate to see a conflagration, a nuclear conflagration caused by a modern day Mrs. O'Leary's cow, which is in the form of a communist Chinese rocket hitting southern California.

Mr. DICKS. All I'll say to my friend, and I appreciate his commitment, I believe that the United States has an adequate deterrent that we can deter them from ever doing what the gentleman has suggested. And I hope someday we have a national missile defense system.

But, again what happened here, you're going to have to look at it and decide how significant you think it was. There is a dispute about that. Some people view it—and I would argue—I would argue that, yes, some technology was transferred; the significance of that and the damage to the country, we're going to do an assessment. We're having an assessment done of that.

So we'll all get the information. I don't think it's going to change the overall strategic balance.

Ms. ROS-LEHTINEN. Thank you so much.

Mr. DICKS. And I feel very comfortable with it.

Ms. ROS-LEHTINEN. Thank you, Congressman Cox, and thank you, Congressman Dicks, for an excellent presentation. Our Subcommittee looks forward to continuing to work with you on this very important issue. Thanks Chris, thanks Norm.

Our second set of panelists, we are pleased to have testifying before us Bill Reinsch, Under Secretary for the Bureau of Export Administration for the U.S. Department of Commerce.

As head of the Bureau of Export Administration, Secretary Reinsch is charged with administering and enforcing the export control policies of the U.S. Government, as well as its anti-boycott laws, and is part of an interagency team helping Russia and other newly emerging nations developing effective export control systems.

From 1991 to 1993, Secretary Reinsch served as Senior Legislative Assistant to Senator Rockefeller, responsible for trade, International Economic Policy, Foreign Affairs and Defense, and served on the staff of the late Senator Heinz.

Secretary Reinsch has served as an adjunct Associate Professor at the University of Maryland's University College, at the School of Management and Technology, since 1990.

We welcome the Secretary here today.

Also testifying will be Richard Hoglund, the Deputy Assistant Commissioner for the Office of Investigations of the U.S. Customs Service. Commissioner Hoglund's investigative and management experience covers all areas of customs enforcement, including investigations on narcotics, money laundering, export controls and trade abroad.

Mr. Hoglund served as special agent in charge in Detroit and during this period he also served several long-term assignments in my hometown area of south Florida for Operation Florida. He has previously served as Senior Special Agent and Group Supervisor and Mr. Hoglund began his Federal law enforcement career as a U.S. Sky Marshal in 1971, the same year he became a U.S. Customs Special Agent.

We welcome both of you here today. Secretary Reinsch.

STATEMENT OF THE HONORABLE WILLIAM REINSCH, UNDERSECRETARY OF COMMERCE, BUREAU OF EXPORT ADMINISTRATION;

Mr. REINSCH. Thank you, Madam Chairman. I've been told that you run a tight ship and I'm going to try to briefly go through my statement and I'd ask——

Ms. ROS-LEHTINEN. I'm powerless without my buttons here.

Mr. REINSCH. I would ask that the full statement be put in the record.

Ms. ROS-LEHTINEN. Of course, we will be glad to enter both of your testimonies in the record.

Mr. REINSCH. What I would like to do today is first describe why we need the EAA, and then talk briefly about H.R. 361, which is the legislation passed in the House in 1997, and which is very similar to legislation the Administration proposed in 1994.

Currently, we are operating under emergency authority, as was noted in the last panel. Doing so means functioning under certain

legal constraints and leaving important aspects of our control system at risk of legal challenge.

In addition, it can undercut our credibility as leader of the world's efforts to stem the proliferation of weapons of mass destruction.

In some significant areas, we have less authority under IEEPA than under the Export Administration Act of 1979. Foremost among these, as Congressman Dicks mentioned, are the penalty authorities, which are substantially lower, both criminal and civil, than those for violations that occurred under the EAA.

However, even the EAA penalties are too low and have been eroded over the past 20 years by inflation. The Administration's bill, as well as the bill passed by the House 2 years ago, significantly increased the penalties. We rely on the deterrent effect of stiff penalties. The longer we are under IEEPA or even the old bill, the more the deterrent erodes.

Another limitation of IEEPA for us concerns police powers, the authority to make arrests, execute search warrants and carry firearms of our enforcement agents. Those powers lapsed with the EAA of 1979. Our agents must now obtain special deputy U.S. marshal status in order to exercise these authorities and function as law enforcement officers.

While this complication can be overcome, has been, doing so consumes limited resources that would be better used for enforcement. Both the Administration's bill and H.R. 361 continue those powers, as well.

Finally, the longer the EAA lapse continues, the more likely we will be faced with challenges to our authority. For example, IEEPA does not have an explicit confidentiality provision like that in Section 12(c) of the Export Administration Act or similar provisions in the Administration's proposal and the House bill 2 years ago.

As a result, the department's ability to protect from public disclosure information concerning license applications, the licenses themselves and related enforcement information is likely to come under increasing attack on several fronts.

Similarly, the absence of specific anti-boycott references in IEEPA has led some respondents in anti-boycott cases to argue thus far unsuccessfully that BXA has no authority to implement and enforce the anti-boycott provisions of the Export Administration Act and our regulations,

On a practical note, we are also finding that the Congressional requirement to conduct post-shipment visits on every computer over 2,000 MTOPS exported to 50 countries is rapidly becoming a major burden, for precisely the reasons that Mr. Manzullo referred to in his question. It forces us to divert enforcement resources to visit computers that do not need to be seen, with the result that we have fewer resources left to focus on real enforcement problems.

Unlike the computer export notification provision in the same law, the visit provision cannot be adjusted by the President to take into account advancing levels of technology, so we must seek relief from Congress on this issue.

The lapse of authority also has policy ramifications. Although we've made great progress in eliminating unnecessary controls, while enhancing our ability to control sensitive exports, exporters

have the right to expect these reforms to be certain and permanent, as they would be if they were embodied in legislation.

In addition, failure to enact a new EAA sends the wrong message to our allies and regime partners, whom we have been urging to strengthen their export control laws. We have also been working with the former Soviet Union in Warsaw pact countries to encourage them to strengthen their export control laws and our credibility is diminished by our own lack of a statute.

I would comment, in passing, Madam Chairman, that we have with us today, as they have been visiting BXA this week, representatives from the Russian DUMA and other representatives of the Russian Government who are here precisely to discuss export controls and have an exchange of views and to learn from us about our system and also give us an opportunity to learn from them about their system.

They're sitting back there listening to the exchange taking place so far.

Now, let me comment on—I thought I'd alert you to that, for future reference. Let me comment on legislation. In February 1994, the Administration proposed a revised EAA. Our overall goal was and remains to refocus the law on the security threat the United States will face in the next century—the proliferation of weapons of mass destruction in a more complicated era than we faced during the cold war, while taking into account the growing dependence of our military on strong high technology companies here at home, developing state-of-the-art products, and, in turn, those companies' need to export to maintain their cutting edge.

Mr. Menendez, in his opening comments, I think, summarized the same line of reasoning more effectively than I can here.

Let me focus my remaining remarks on legislation that this Committee reported and the House passed in 1997 that was authored by former Congressman Roth, who I believe will be a Member of the next panel, and will also discuss it with you. Its structure reflected new challenges resulting from the end of the cold war and, in many respects, it was similar to the legislation, as I said, that we proposed.

Its basic control authorities were multilateral and unilateral, instead of the national security-informed policy authorities of the EAA in 1979. Its new structure explicitly recognized the preference for compliance with international regimes that the U.S. either is a Member of or may help create or join in the future. It also provided for increased discipline on unilateral controls and I want to note, in passing, Madam Chairman, the Administration would likely want to suggest some changes to this provisions to ensure that unilateral export controls are available when they're in the overall national interests, consistent with the position we have taken on sanction reform before this body.

But in general, we agree with the need to exercise discipline in the application of such controls.

The House-passed bill also supported the Administration reforms of the licensing and commodity jurisdiction processes. The standards for license processing were consistent with the 1995 Executive order, which provided for a transparent time-limited review process

that permitted all pertinent agencies to review any license application and raise issues all the way to the President, if they desired.

This default to decision approach has replaced the black hole into which licenses often fell, improving the system's responsiveness to exporters, while also providing broader interagency review of license applications that enhance our ability to meet our national security, foreign policy, non-proliferation goals.

On that point, Mr. Chairman, if I could comment on two points that Mr. Cox made on the processes issues. He is correct that the Executive order that I have just referenced gives the other agencies 30 days to review licenses. In fact, every agency takes considerably less time than that. The Pentagon, in the last fiscal year, averaged 14 days to complete its license reviews and the State Department did better than that, they averaged 11 days.

In addition, as Mr. Dicks pointed out, the Executive order provides explicit authority to stop the clock, if you will, should there be a license that raises unusual issues and where more information is needed.

One license that has been in the news lately, and I get depressed when I see this in the news, because they're not supposed to, which was the Hughes APMT license. That one has been pending for about a month, which is well outside the time-frame that we prefer and well outside the Executive order, but I think also we have complicated—we have a process that can accommodate and provide more time.

And that, in fact, the agencies now are doing their routine work in less than half the time that the Executive order allows.

I would also make the point on process that the proposal to act by consensus, which is a term for giving any agency a veto, which does, in fact, do what I think Mr. Menendez or Mr. Manzullo said, coming back to the anyone can say no, and no one can say yes system, would also have the practical effect of eliminating the one part of our process where the intelligence community is represented full-time.

That is the senior level working level review licenses, where the agencies all meet and discuss and the intelligence community is generally there and inputting into the process.

If we went to a consensus approach, what we would get is objections from agencies without discussion and escalation to the political level, missing the most rigorous level of review that is done.

That is why the Administration made the comments in response to the recommendations that Mr. Dicks read in his testimony or in his response.

Let me say, finally, about the House bill, that we do have some concerns, we have had some concerns about H.R. 361's terrorism, unfair impact, anti-boycott, private line of action, and judicial review provisions, as well as certain Constitutional issues that we believe the bill raises. Those are outlined in my written statement and rather than take up your time, I will pass over that and refer you to that.

Let me also point out that we are, at the request of the Senate Committee and also at the request of staff here, undertaking review of our own bill, as well as the House-passed bill, and we will

report to Congress with any post-modifications or changes that we might have.

In conclusion, let me say that we believe an EAA that allows us to fully and effectively address our security concerns, while maintaining a transparent and efficient system for U.S. exporters, is essential.

As I discussed, the Administration and the House, 2 years ago, agreed on most of the important changes to bring the law up to date in light of current economic and proliferation realities. Our preference is that you take up reauthorization of the EAA that would build on a consensus already achieved.

I can understand, however, given your heavy agenda of other matters, that we may find it difficult to devote the time and attention needed to produce such a bill, which, to say the least, has not been without controversy in the past, and it sounds, from the previous panel, may not be without controversy in the future, and under these circumstances, I want to indicate that we will be prepared to discuss with the Committee some extension of the expired EAA to remedy some of the short-term problems I discussed, particularly in the penalties area.

That is not a substitute for full reauthorization, which we still want, but it would better enable us to do our business more effectively if Congress feels it needs more time to do it.

Thank you, Mr. Chairman.

[The prepared statement of William Reinsch appears in the appendix.]

Mr. MANZULLO—[presiding]. Thank you, Mr. Reinsch. Mr. Hoglund.

STATEMENT OF THE HONORABLE RICHARD HOGLUND, ASSISTANT COMMISSIONER FOR INVESTIGATIONS, U.S. CUSTOMS SERVICE

Mr. HOGLUND. Good afternoon, Mr. Chairman and Members of the Subcommittee. It is a privilege to appear before the Subcommittee today to discuss Customs' unique role in enforcing U.S. export controls and the enactment of a new Export Administration Act.

Customs is a leader in enforcing U.S. export controls. We are at the forefront of the Administration's efforts to prevent the proliferation of weapons of mass destruction and conventional arms, combat international terrorism, and force U.S. economic sanctions and embargoes against countries which support international terrorism and threaten global security.

Customs is principally responsible for the enforcement of all U.S. export controls. This includes the controls found in the Arms Export Control Act, which governs exports of arms, military equipment and other munitions; the export administration regulations, which regulate the export of dual-use strategic technologies; the International Emergency Economic Powers Act, in trading with the Enemy Act, which regulate economic and other transactions with specified countries and groups as an instrument of U.S. foreign policy.

Customs' export law enforcement has evolved as the threats we face in international trade have evolved. Through the 1970's, the

threat chiefly involved belligerent countries trafficking in arms. Beginning in the early 1980's, the Soviet Union and its allies began a massive coordinated effort to acquire sophisticated western technologies for use in building their military establishments.

To respond to this threat, Customs Initiated Operation Exodus, an intensified enforcement program to prevent the illegal export of munitions, strategic technologies, and shipments destined for sanctioned and embargoed countries.

Our objectives are to disrupt illegal international trafficking in sensitive and controlled commodities through the interdiction of illicit shipments and to dismantle criminal trafficking organizations through the arrest, prosecution and conviction of export violators.

Since its inception in 1981, Operation Exodus has resulted in the seizure of over $1.2 billion in merchandise being exported in violation of U.S. export controls. Customs is the only Federal law enforcement agency with border search authority. Only Customs may search without a warrant passengers, conveyances and cargo entering and leaving the United States to ensure full compliance with all U.S. import and export requirements and to uncover violations.

Customs' automated systems are key tools in our interdiction and investigative efforts. The Automated Export System, or AES, is now operational at all ports in both the air and sea environments. AES is a new and powerful tool not only in the processing of trade data and the collection of export statistics, but also in the identification of potential violations of possible U.S. export controls.

Customs' successes in conducting proactive investigations of criminal export violations continues our tradition of leadership in export enforcement. For example, in fiscal year 1998, we arrested over 450 criminal export violators, secured over 280 indictments, and obtained over 300 convictions for export violations. These included obtaining the conviction of two individuals in Oregon on their attempts to export chemical weapons precursors to Iran; one corporation for illegal exports of computer workstations to a Russian nuclear weapons factory, laboratory; and, a U.S. corporation for the illegal export of $3 million worth of aircraft parts to Iran.

In the past 2 weeks alone, we've arrested two individuals for attempted illegal exports of sophisticated airborne navigation equipment to China and obtained the conviction of a third who was sentenced to 24 months imprisonment for violations of the Arms Export Control Act.

Now, let me turn to Customs' views on enactment of a new Export Administration Act. First, let me say that Customs does not set Administration policy on which commodities should be controlled for export to which countries. That responsibility lies with the Department of State, the Department of Commerce, the Department of Defense, and other agencies.

Customs' role is to enforce U.S. export controls through the processing of export documentation, the examination and clearance of exported merchandise, the seizure of merchandise exported in violation of U.S. export controls, and the investigation of criminal violations of our export control statutes.

That being said, Customs supports passage of a new Export Administration Act as a way of enhancing our ability to enforce U.S. export controls.

The Congress last considered passage of an Export Administration Act in 1996. That proposed legislation was introduced before the Congress as H.R. 361. Customs supports the penalty provisions set out in Section 110 of H.R. 361 and the authorities for Customs' investigations and seizures related to export violations set out in Section 113.

We believe that similar provisions should be incorporated into any new Export Administration Act which may now be considered by the Congress.

Customs suggests that the Congress consider four additional provisions which would close enforcement loopholes and enhance our export enforcement abilities.

The first deals with statutory authority to examine outbound mail. Current restrictions on Customs' ability to search outbound mail limit our ability to interdict strategic commodities and technical data being illegally exported through the mails from the United States. Statutory language to clearly authorize Customs to search outbound mail would deny international criminals and terrorists' use of the U.S. mail to avoid U.S. export controls.

A second enhancement would be the inclusion of an attempt provision as a violation of a new Export Administration Act. As I stated earlier, one of Customs' objectives in export enforcement is the interdiction of merchandise being illegally exported from the United States.

The inclusion of an attempt provision in any new Export Administration Act would make clear that a substantive violation of the Act has occurred when Customs is successful interdicting strategic goods before they leave the U.S., in addition to actual consummated export.

Third would be statutory authority for Customs to ship inoperable control items to countries sponsoring terrorism in an undercover capacity in furtherance of a law enforcement investigation.

Fourth would be enactment of a Customs criminal statute covering exports contrary to law and parallel to the existing smuggling statute, Title 18, United States Code 545. This particular provision is currently contained in Senate Bill S. 5.

In closing, I appreciate the opportunity to appear before you today. The United States Customs Service enjoys a unique role in export enforcement, preventing the proliferation of weapons of mass destruction, protecting the American public from the threat of international terrorism, enhancing regional and global security through combating illicit trafficking in arms, and implementing U.S. foreign policy through out enforcement of economic sanctions and embargoes against countries which support international terrorism and suppress freedom around the world.

We are proud of our role in enforcing U.S. export controls and we support your efforts to enact legislation to give us the tools to protect the security of all Americans and make the world a safer place in which to live.

Thank you, and I would be pleased to answer any questions you might have.

[The prepared statement of Richard Hoglund follows:]

Mr. MANZULLO. Thank you very much. I'm going to waive any questions I have and I'm going to defer to Mr. Menendez and hold everybody to the 5-minute rule.

I don't have a light, but I do have a gavel. So I will tap at 4 minutes. At 5 minutes, I'll lower the gavel. Mr. Menendez.

Mr. MENENDEZ. Mr. Secretary, let me thank you for your testimony. I have a couple of questions, if you can work with me to see if I can get through them in my 5 minutes.

Regarding the satellite license that was processed by the Commerce Department that were the subject of investigation by Representative Cox's Committee, were there any disputes among agencies regarding whether to license the satellite launches?

Mr. REINSCH. No, sir. All agencies concurred in the issuance of that license.

Mr. MENENDEZ. So they all concurred. There were no policy objections that were overridden by the Department of Commerce.

Mr. REINSCH. No. Every satellite license the Department of Commerce has issued has had the concurrence of the State Department and the Defense Department.

Mr. MENENDEZ. With reference to the volume of cases that Commerce processes annually, could you give me a sense of it?

Mr. REINSCH. We are hovering between ten and 11,000 licenses per year currently.

Mr. MENENDEZ. And of these, what percentage of the licenses are reviewed by other agencies?

Mr. REINSCH. Subsequent to the Executive order in 1995, right now, it is around—well, I can give it to you exactly. In fiscal year 1998, it was 85 percent and in fiscal year 1997, it was 91 percent. That were referred to one or more other agencies.

Mr. MENENDEZ. So that in other words, you don't have exclusivity an overwhelming amount of the time.

Mr. REINSCH. Prior to the Executive order in fiscal year 1991, it was 21 percent, but before we issued the EO, it was around 50 to 54 percent. It's been climbing into the upper 80's and 90's every since.

Mr. MENENDEZ. Now, let me ask you. You heard Mr. Cox and Mr. Dicks and you heard some of my questions. Could you give us a sense, I think you refer to it in your testimony, I'd like you to elaborate, what would be, in fact, the result if we were to adopt, as proposed, the changes that they have suggested concerning, in essence, this process in which all of the agencies would have to reach consensus or, in essence, the veto of any individual?

Mr. REINSCH. That particular proposal, Mr. Menendez, I believe, would cripple the process. What you would have is—let me go back. The reality of this process is that to the extent that there is disagreement over the issuance of the license, it most often is amongst individuals at low to mid working levels, and as the process works its way up in each agency's own building, it goes through a variety of changes and by the time you get to senior levels, most of the time, there is a consensus.

So 90 percent of our licenses are handled by consensus, without having to get to political levels of resolution.

If you are going to effectively give every agency a veto, which is what consensus would permit, what you are doing is telling low

level officials who might dissent from their own agency's position, not to mention any collective position, they can put in a veto of a license and prevent consensus, that would force these issues to be taken essentially to the assistant secretary level for resolution, which would force senior officials to spend a much larger amount of their time than they do working on these.

And from out standpoint, it would eliminate the most rigorous level we have. The senior working level, where all the agencies get in the same room and actually debate these things and argue them out and have the Intel community there on scene supplying the information.

Mr. MENENDEZ. The last question I have for you is with reference to—and I think our Russian colleagues left, but I had this question anyhow, so I'm going to ask it, whether they are here or whether they're not.

Despite Russia's pledges upon joining the Wassenaar agreement not to export missile technology to Iran, the Administration has had to sanction Russian entities for this reason.

So give us a sense of what's the value of having Russia as a member of such an arrangement if it does not achieve our goal of limiting exports in this particular case to Iran and give us a sense of this multilateral effort which has, seems to me, had to have virtually no real consequence.

Mr. REINSCH. These regimes, we never get the full level in negotiation and, again, we have to spend time, whether it's the missile technology control regime or the nuclear suppliers group, regimes that are generally thought of as being mature and effective.

It took them a long time to reach that point. It's going to take Wassenaar some time to reach that point. We are better off with Russia in than out. They learn the standards, they learn what's expected of them, they subject themselves to pressures not only from us, but from the Germans, the French, the British to conform to those norms and standards.

They subject themselves to regular meetings in which they learn what it is and why and what they're expected to do about it, and generally it helps them upgrade.

It's for the same reason that we have an extensive program with them, which is why these people were here this week to exchange views and help them develop a system of their own. It's been my view that while we do have policy differences with them and while we have sanctioned them, as you point out, there are also a number of situations in which things are leaked out of their borders that their government would have stopped had they had the capacity to do so and had they known about it.

What Wassenaar does is help give countries the tools that they can use to prevent, at a minimum, that part of the problem and also to subject them to multilateral pressure to deal with the first part of the problem, namely, their policy.

Ms. ROS-LEHTINEN—[presiding]. Thank you so much. Thank you, Mr. Menendez, and I want to thank our Vice Chair for taking over and I hear that he instituted a strict 5-minute rule. Good for you. No more Ms. Nice Guy. With that in mind, Congressman Rohrabacher.

Mr. ROHRABACHER. Right. Thank you. Are our Russian friends still here? No, they left. That's right. They heard I was going to ask them up.

To our friend Mr. Hoglund, U.S. customs investigated the transfer of rocket technology to communist China. Was there a recommendation made by U.S. customs that charges be brought against Americans involved with transferring rocket technology to the communist Chinese?

Mr. HOGLUND. We have an active investigation. It is before a Federal grand jury and when that is concluded, we'd be pleased to provide the outcome of that, but currently that's under active investigation.

Mr. ROHRABACHER. Is it against the rules to relate whether or not you have recommended a prosecution or not?

Mr. HOGLUND. Well, we wouldn't recommend. We would present the facts to the United States Attorney. It would be presented to a Federal grand jury and then that is where the recommendation would come from.

Mr. ROHRABACHER. Well, in your investigation, did you find that American technology, rocket technology had been transferred to the communist Chinese in a way to upgrade the capabilities and effectiveness of communist Chinese rockets?

Mr. HOGLUND. I really would not feel comfortable answering that, although the newspapers suggest that that the Office of Defense trade controls penalized companies in regard to that issue.

Mr. ROHRABACHER. And was there, to your knowledge, a recommendation by members of the Administration that a licensing of a satellite launch by an American company be denied because it would undercut a prosecution of an American corporation for transferring rocket technology to the communist Chinese?

Mr. HOGLUND. I am not familiar with that. I am personally not familiar.

Mr. ROHRABACHER. You're not familiar with that.

Mr. HOGLUND. No, sir.

Mr. ROHRABACHER. It was in the newspaper. I'm surprised that that wouldn't be something——

Mr. HOGLUND. I can get you a better answer.

Mr. ROHRABACHER. I would like to have a better answer on that. So if you could get it to me with 24 hours, would that be OK?

Mr. HOGLUND. Sure.

Mr. ROHRABACHER. Or how about a half an hour? All right. Again, people are dancing around the issues here. Everybody is afraid here, it seems to me, to look each other in the face and say that some American corporations may not keep the national security interest of the United States in mind when they're out to make a buck. Surprise, surprise.

Has it been your experience at Customs that we can trust American companies to watch out for American security over and above their own profit?

Mr. HOGLUND. It's our experience that in virtually every area we investigate and enforce, that there is a profit motive virtually all the time.

Mr. ROHRABACHER. And the things that you're investigating sometimes are very heinous violations of our national security, is that not correct?

Mr. HOGLUND. They can be, yes.

Mr. ROHRABACHER. Listen, I don't know why everybody—you know, nobody wants to tell their friend at the country club that they betrayed the United States of America. That's what it comes down to here.

Folks, we're talking about—yeah, I'm not talking about whether or not the Chinese are going to end up with the same kind of ballistic missile system that they had in the Soviet Union. People can dance around this all they want. What we're talking about is whether it's possible that a communist Chinese rocket, using American technology, now has a greater chance of landing a nuclear weapon and killing millions of Americans, making that conflagration caused by Mrs. O'Leary's cow in Chicago look like petty ante arson.

This is a very serious issue and it does not lend itself to the—frankly, the dancing around that I've seen here today and this obfuscation that's being done by people who are trying to protect this Administration for some very terrible decisions.

Mr. Hoglund, does the fact that this Administration, even after evidence continues to mount that the Chinese communists have been systematically trying to get their hands on American technology of weapons of mass destruction, doesn't the fact that we continue to label that regime as America's strategic partners undercut the efforts to prevent American corporations from inadvertently perhaps giving weapons technology to the communist Chinese?

Mr. HOGLUND. I really don't feel I'm qualified to answer that.

Mr. ROHRABACHER. All right. Thank you very much.

Ms. ROS-LEHTINEN. Thank you so much. Thank you to your panelists for being here with us today and we also look forward to working with you. Thank you.

Oh, I'm sorry, Mr. Manzullo. I thought when you were chairing that you recognized yourself.

Mr. MANZULLO. That's fine. Go the next panel.

Ms. ROS-LEHTINEN. We will hear from our third set of panelists. Former Chairman of this Subcommittee, Toby Roth, who served as a Member of Congress for 18 years, until January 1997. He currently serves as President of the Roth Group, a political consulting firm here in D.C. The former Representative of Wisconsin's 8th Congressional District also served as Senior Member of the House Banking Committee and was a founding Member of the Conservative Opportunity Society.

He is a frequent guest expert on public affairs programs.

He will be followed by another former colleague, Dave McCurdy, current President of the Electronic Industries Alliance. Mr. McCurdy served as Chairman and Chief Executive Officer of the McCurdy Group, a business consulting and investment practice.

Mr. McCurdy served the 4th District of Oklahoma for 14 years and during his tenure in Congress, he attained numerous leadership positions, including serving as Chair of the House Permanent Select Subcommittee on Intelligence, Chair of the Subcommittee on Military Installations and Facilities of the House Armed Services

Committee, and was a Subcommittee Chairman of the House Science Committee.

Next is Joel Johnson, who serves as Vice President of the International Division for the Aerospace Industries Association of America, AIA, which represents 50 of the major manufacturers of the industry. Prior to joining AIA, Mr. Johnson was Executive Vice President for the American League for Exports and Security Assistance.

Mr. Johnson also served on the Senate Foreign Relations Committee as Professional Staff Member and as Chief Economist for the Foreign Assistance Subcommittee.

Previously, Mr. Johnson served as a member of the Secretary of the States Policy Planning Staff and is Deputy Director of the Office of Trade Policy and Negotiations at the Treasury Department, and a wide array of other positions in the field of International Economic Affairs.

Following Mr. Johnson is Dr. Paul Freedenberg, the Government Relations Director for the Association for Manufacturing Technology. Dr. Freedenberg was appointed by President Reagan to serve as the Undersecretary for Export Administration at the Department of Commerce.

Dr. Freedenberg was Staff Director of the Senate Subcommittee on International Finance and since 1989 he has been an International Trade Consultant with the Law firm of Baker in Washington, D.C., specializing in general international trade issues, as well as technology transfer, export licensing, export financing and enforcement.

We welcome all of you and look forward to your testimony. Congressman Roth.

STATEMENT OF THE HONORABLE TOBY ROTH, FORMER MEMBER OF CONGRESS, PRESIDENT, THE ROTH GROUP

Mr. ROTH. Thank you very much, Madam Chair. It's great to be back in these familiar surroundings, with Members of the Committee that I enjoyed so much working with.

It's my pleasure to be here today. With the time constraints, Madam Chair, I ask that my entire testimony be entered into the record, so I can abbreviate my remarks.

Ms. ROS-LEHTINEN. Thank you. Without objection, we will be glad to enter all of your testimonies and we've got our enforcer here behind me, Mauricio "The Body" Tomargo.

Mr. ROTH. As you said, Madam Chair, I spent 18 years as a Member of this Subcommittee, two as its Chairman. I devoted much of time to analyzing and attempting to improve the Export Administration Act.

I leave to others whether I can claim any particular wisdom when it comes to the EAA, but no one can doubt that I have a lot of experience, good and otherwise, in exploring the byways and the highways.

By way of clarification, although I'm a consultant whose clients include firms in high tech sectors, I appear here today representing no one but myself. Since leaving Congress, I have gained additional knowledge of the industry's perspective, but most of what I believe I can offer as a function of the years I spent serving in this House and on this Subcommittee.

Some of us have a question whether the EAA is needed at all. We had been surviving adequately under the International Economic Emergency Powers Act, IEEPA, for nearly 5 years. So would say some individuals, so why open the Pandora's box and write a new EAA.

I respectfully disagree. For one thing, IEEPA is largely a blank check for the executive branch. Even if we believe that the current Administration has taken a reasonable and balanced approach to the export controls, there is no guarantee that that will continue under this or under a new Administration in the future.

Second, it is Congress' job to determine how Government regulatory programs should operate. Congress advocates that responsibility when it throws up its hands and leaves everything to the President.

So I believe strongly that we should have an EAA and should not continue to rely on IEEPA.

My most important recommendations, Madam Chair and Members of the Committee, are these. Export licenses should be required only for goods and technologies that are controllable from a practical standpoint, are not available to our foreign competitors, and would make, if placed in the wrong hands, a significant and material contribution to the weapons proliferation or other legitimate stated purpose of control.

If items such as personal computers and mass market software, with 128-bit encryption, are widely and easily available domestically, export controls will not keep them away from anyone who wants to obtain them. The same is true for items that are available from foreign competitors whose governments do not, in fact, impose controls as stringent as those imposed by the United States.

Second, the EAA should discourage the imposition of unilateral export controls and other unilateral export restraints. Faced with misconduct by Foreign Governments, public officials, like our Congressmen, all too often have seen the imposition of export controls as the only available alternative to sending in Marines, at one extreme, or to do nothing on the other.

When governments whose exporters supply identical goods and technology refuse to go along with our controls, however, the effect is like damming up half a river. For the most part, the misbehaving government that is the target of our ire, merely turns to industrialized countries to supply its needs, while American workers and business people end up suffering.

This hardly seems like sound thinking to convince a Foreign Government to change its ways.

Third, the sluggish export control system should rule swiftly on license applications and requests for policy determinations. Inordinate delay in approving an export license and costs to a U.S. exporter a sale just as surely as a license is denied. The Commerce Department has been doing a good job of managing the dual-use licensing system and should remain in charge.

The FAA should restrict, if not the EAA, let me say that, the EAA should restrict, if not eliminate the extra-territorial application of the United States Export controls. The United States takes the position that an item made in this country remains subject to our export jurisdiction forever, no matter how long it may have

been exported and no matter how many non-Americans may have owned it.

This is inconsistent with international standards. This hearing marks the beginning of a lengthy process and I hope that it will produce a new EAA, one that—an EAA reflecting the realities of the millennium and not the cold war.

Now, in 1996, this Subcommittee and the House of Representatives passed a bill with your help, a great EAA bill. It was applaud by all. The President applauded it, the people here in the House passed it under suspension, we had people in the Senate all agree. There was only one Senator put a hold on the bill at the end and that is why this bill was not enacted into law.

Let me say that President Clinton and Sandy Burger and Tony Lake did a great deal to make this bill possible. We met with the President three different times. The House passed it, the Senate, because of one Senator, it was not passed.

I hope that this Committee and this Congress will now move forward and complete that job.

Had we done so, I think many of the problems that we have today would have been eliminated.

Thank you very much, Madam Chairman.

[The prepared statement of Toby Roth appears in the appendix.]

Ms. ROS-LEHTINEN. Thank you so much. Mr. McCurdy.

STATEMENT OF THE HONORABLE DAVE McCURDY, FORMER MEMBER OF CONGRESS, PRESIDENT, ELECTRONIC INDUSTRIES ALLIANCE

Mr. MCCURDY. Thank you, Madam Chair. I, too, would like for my statement to be admitted into the record, and I want to state, just first of all, how pleased I am to be back.

This is my first return to the House after 4 years and I can't think of a finer Subcommittee or group of people to be with. As the Chairwoman knows in the annual congressional baseball game, she was always the most feared batter that I ever faced in all those years, had the smallest strike zone and was one of the most courageous and fearless.

Ms. ROS-LEHTINEN. The game has not improved in your absence, unfortunately. I wish it would have been your fault, but.

Mr. MCCURDY. And let me congratulate Mr. Menendez for his steady rise in the leadership, as well.

Madam Chair, I'm delighted to be here today as representing the Electronic Industries Alliance, over 2,000 member companies which makes it the premier trade association for the high technology industry.

During my 14 years of tenure in this body, I served as Chairman of the House Intelligence Committee and, as well as Subcommittees in the Armed Services Committee and the Science and Space Committee.

I continue to serve now as a commissioner on the—and you have to forgive the title of this commission, but it's the Commission to Assess the Organization of the Federal Government to Counter the Proliferation of Weapons of Mass Destruction.

For over a year now, we've been reviewing the tremendous destructive potential of chemical and biological and nuclear weapons land their proliferation of that.

But the task of the commission, I must say, was to look at the organization of the Federal Government. And what we heard earlier today from both Mr. Cox and Mr. Dicks seems to be—and those are two of my best friends and people that I respect the most in the House.

But some of the statements that came forward with regard to the need to actually bifurcate the decisionmaking process as opposed to centralize is just the opposite direction that most people are looking at how to organize the Federal Government to combat the proliferation of technology and of weapons of mass destruction. So it seems somewhat contradictory.

But since I do serve on that commission and, based on my past experience, I'm very concerned about export controls for our national security. However, I also recognize the severely limited effectiveness of export controls.

Madam Chair, I have the privilege of representing the most innovative, yet competitive industry in the global economy. Our companies operate globally and they face intense international competition. The fact is the days when U.S. companies dominated the high technology industry are over. Similarly, the days when the domestic U.S. market could sustain the industry are also over.

It has become almost clich that the global economy is a fact of doing business for us and is a critically important concept to keep in mind as we formulate public policy in this area.

As any successful CEO will tell you, competing, indeed surviving in the global economy means exporting. The phenomenal success of U.S. technology industry comes from its entreprenurialism, its aggressiveness, its willingness to compete, all those free market forces that drive innovation.

In this kind of business environment, tapping new markets before competition does is the key to success. As you can see on the chart behind me, our industry will export over $150 billion in goods this year. This is more than one third of what our industry produces.

The chart also demonstrates how fast technology is changing and becoming pervasive throughout the world. This is especially true in the area of semiconductor speed, where Moore's law defines rapid pace of change.

Congress has a critical role to play in overseeing this country's export control system and we encourage efforts to take a fresh look at the system, with an eye toward updating it to reflect technological and political realities of the post cold war world.

It is a daunting challenge and with that in mind, I would like to lay out three very broad principals and I think the three Members that are present today have expressed those, as well, what should guide our thinking on export control issues.

The first principal is that U.S. export controls must reflect the new commercial and political realities of the post cold war world. The cold war export control regime was based on then, and it was an accurate premise at that time, that if you prevent U.S. companies from exporting a product to specified destinations, you will

have denied that destination of the use of that product or technology.

This premise no longer holds. Whereas U.S. industry used to have a monopoly over the development and production of high technology products, many of which were directed by the Federal Government, many countries today produce the same or often better commercial technologies as U.S. manufacturers.

The governments of our competitors do not place the same restrictions on their export activities. When U.S. companies are impeded from selling abroad, our competitors are willing and able to fill the void.

The second principal is that the current model for administering U.S. export control law is appropriate and effective in protecting national security. And I agree with my colleague, Mr. Roth, on that point.

Currently, there are two systems for administrating export controls, both of which provide for interagency review of license applications.

Now, there's certainly room for improvements in the license review process, but essentially they're appropriate as separate functions. The Commerce Department's review system ensures that legitimate commercial exports are permitted, to the extent possible, without interfering or threatening U.S. National Security or Foreign Policy interest.

The State Department review system ensures that military exports promote our national security and foreign policy objectives.

The third principal is that our industry strives to be compliant with the relevant export control laws. In fact, the industry devotes significant resources to be compliant. Many of our companies have elaborate and expensive export control compliance systems that include numerous highly trained staff.

I brought with me the regulations that our companies must adhere to and there are a stack of books there. They are very complex and sometimes difficult to comply with.

Madam Chair, in closing, I'd like to call your attention to my written testimony, which describes a number of specific export control issues of concern to our industry.

I hope these comments are useful for you as you continue in this effort, and certainly I'd be happy to entertain any questions.

[The prepared statement of Dave McCurdy appears in the appendix.]

Ms. ROS-LEHTINEN. Thank you, Dave. Mr. Johnson.

STATEMENT OF JOEL JOHNSON, VICE PRESIDENT, INTERNATIONAL DIVISION, AEROSPACE INDUSTRIES ASSOCIATION;

Mr. JOHNSON. Thank you, Madam Chairwoman. As an ex-staff person as opposed to an ex-member, I'm particularly sensitive to the Congressional hook and will be very brief.

Obviously, Aerospace, too, is extremely sensitive concerning export controls. We exported about $59 billion last year and with a net of about $37 billion, the largest net exporter of any sector in the U.S.

It's certainly timely to turn to the issue of EAA. I would hope that this also would begin a process of laying the groundwork for a major overhaul of the overall export control legislation, regulation and administration that would be appropriate for the 21st century.

Your Full Committee is the only Committee that can look at the full range of export controls, including both the AECA and the EAA, and that, I think, is extremely necessary.

I touch in my testimony on how times have changed. We clearly don't have a consensus among the industrial democracies that we had during the cold war. That's particularly true with respect to China. The distinction between military and commercial technology is increasingly blurred and the rate of change of technology is ever more accelerated.

Our military is increasingly dependent on the commercial sector for its requirements and, in turn, high technology commercial sectors are dependent on the international marketplace for their economic health.

I might note, in the case of Aerospace, as opposed to 10 years ago, when 65 percent of our customer base was the U.S. Government, today it's 40 percent. Of the remaining 60 percent, 75 percent is for export.

Meanwhile, we have too many export control systems requiring too many licenses, with too many bureaucratic actors involved in decisionmaking. It seems to me that we do need to take a long-term look at the process, but in the short term, it clearly makes sense to try to pass an interim EAA, perhaps for a 3-year time span.

The industry would certainly support such a move if such an act contained a number of safeguards, many of which have been referred to already. Let me touch very briefly on the ones that are critical to us.

First, obviously, foreign availability. If all the control does is shift the source of supply, you are punishing the American supplier, not the person that you are trying to affect.

Second, contract sanctity. In general, companies ought to be able to carry out existing contracts, except in the context of multilateral controls that cutoff everybody's contracts.

Third, support of formally exported products. This is particularly important for us in the realm of safety. People who fly commercial airplanes often have U.S. and Foreign citizens on them, even when they do come under some kind of export controls. They fly over many countries' air space.

You cannot pull an airliner in trouble off to the side of the road and wait for a wrecker to appear.

On multilateral versus unilateral controls, obviously, as anyone in industry will say, we much prefer multilateral controls and believe there should be some unit on unilateral controls.

I'd note that H.R. 361 is somewhat misleading in that it has a multilateral section which in turn pertains to a whole slew of unilateral controls and unilateral sanctions, which would not be emulated by our industrial partners.

Economic impact. Export controls, I think, are sometimes politically attractive because they're essentially one of the last unfunded mandates. They don't show up in the Federal budget. They're sim-

ply imposed on industry and workers. It seems to me that a CBO review of what the costs of export controls would be perhaps appropriate, and enough said on that.

Time limits on controls, as I already alluded to. When the intended results of controls don't occur, there is no politically easy way to get rid of those controls. The EAA that was passed in 1996 does have at least some automatic time endings for those controls unless the President extends them, and I think that's probably appropriate.

Finally, licensing processing time. This was discussed considerably earlier. It is terribly important in the commercial arena. You can make time deadlines. I had a company tell me 2 days ago that because they could not get a license within 35 days, even to respond to a request for a study from Intelstat, the study went to the Germans.

Some of us in the room are old enough to know that the Germans not only know something about satellites, but know something about rockets, and I'm not sure how U.S. security was improved by turning that study over to our European competitors.

I think H.R. 361 did address most of these issues. There are certainly some limitations to it. But its not a bad starting point.

I would hope that the comments in the larger testimony will be useful to the Subcommittee and the Committee, and I will cutoff there before the hook comes.

[The prepared statement of Joel Johnson appears in the appendix.]

Ms. ROS-LEHTINEN. Thank you. Dr. Freedenberg.

STATEMENT OF DR. PAUL FREEDENBERG, DIRECTOR OF GOVERNMENT RELATIONS, THE ASSOCIATION FOR MANUFACTURING TECHNOLOGY

Dr. FREEDENBERG. As the last one up, I will be even briefer, because I recognize it's been a long day.

My testimony deals with the problems for U.S. companies created by the current multilateral export control structure.

Wassenaar, which has replaced COCOM, causes a great deal of problems, particularly with regard to China. COCOM worked reasonably well and had a clear enemy. The Wassenaar arrangement works poorly and there is absolutely no consensus with regard to China. China is the one area which you would expect an export control system to deal with, and yet Wassenaar, when it was formed, as I understand it, our negotiators specifically said it does not deal with China. It deals with the pariah states.

That put the United States in a very uncomfortable position, because the United States, one gets the impression the United States has a fairly easy export control system on companies. I represent the machine industry. We've had an average of five licenses per year over the last 5 years. That's 25 total. That's a fairly tough system.

And we're not making judgments about any individual license, but clearly it's not a system that lets everybody slip through. It also is a system which, if you compare it with our allies, the allies are able, and I put some data in my testimony, the allies are able to get licenses, allied companies and allied countries, such as Ger-

many, Italy, France, et cetera are able to get their licenses through the system in somewhere between 10 days to a month.

The U.S. system—well, it was many months and sometimes as long as a year. So again, one would hope there would be some time limits put in. It's a very difficult thing to impose.

There is a particular problem because China is the largest capital goods market and what they have, following the Aerospace representative, is that we see that Boeing is increasingly placing its Aerospace contracts, large portions of those contracts offshore.

With the current U.S. export control system, those Aerospace parts are likely to be made on European machine tools. They're going to be made, the Chinese are going to get those machine tools, but they're going to be European. That's something that needs to be addressed.

There is very little chance, under the current circumstance, that the Wassenaar allies would go along with our own tightening, but one of the things I think we need to do is take a very serious look at Wassenaar, decide where our negotiating strategy is, and go back and reopen the issue.

I have three recommendations in my testimony and the first and the most important is that foreign availability provisions ought to reflect the system that we currently find ourselves in. We find ourselves, under the export control system that I enforce, from 1985 through 1989, foreign availability had to be found outside the system.

Under the current system, because Wassenaar is so loose and because we operate under national discretion, a system of national discretion, foreign availability can be found from within the international—the multilateral system. That is, there can be, for example, machine tools supplied from other Wassenaar members and I think we need to have a provision, and actually H.R. 361 has a fairly strong provision, I would recommend adopting that, which recognizes that foreign availability can exist, in fact, from within a system.

The other two recommendations I have, and I will conclude with those recommendations, are I agree with Secretary Reinsch that if we were go to go a consensus system, unless we're very clear what we mean by consensus, it could easily lead to a veto and we could end up with deadlocks, with the lowest common denominator determining whether licenses go forward.

That would—as I've said, the current system isn't exactly an easy one. For the machine tool industries, there's been very few licenses granted. If we were go to go to a sort of veto system, we think those few licenses that were granted, there would be even less in the future.

Finally, with regard to the recommendation for surprise inspection as a precondition for selling computers, we have to—I think the likelihood is that the Chinese would refuse this. If we don't want to be selling computers to China, that's one thing. I think we ought to have a debate about that subject.

But I happen to know the United States has a very strong position on surprise inspections by foreign countries, as well. That's an issue that went into the chemical weapons convention. We're not

going to expect other countries to accept provisions that we will not accept ourselves.

Now, that doesn't mean—that's something that we have to take into consideration if we're serious about dealing with China.

I think I will stop there.

[The prepared statement of Paul Freedenberg follows:]

Ms. ROS-LEHTINEN. Thank you, Paul. I just have a few questions for you.

Mr. McCurdy, you had stated in your testimony, written testimony, that if we treat China as an enemy, then it will become an enemy, and some would say that the Chinese communist party and the Chinese leadership have declared themselves as enemies of the United States.

In fact, on December 18th, the President of China gave a reform speech to 6,000 communist party government and military officials, stating, quote, "The Western mode of political systems must never be copied. China should try to minimize the impact of international risk and decadent thoughts and lifestyles."

His comments are directed not only at the United States, but all western countries.

Would you suggest that the U.S. should remove all export restrictions currently imposed on China and how can the U.S. develop beneficial trade relations with China while safeguarding our U.S. security interests in the region?

Mr. MCCURDY. Well, thank you, Madam Chairman. I think the Chinese President also directed that statement at his own people. There is a great deal of change underway in China itself.

We've seen dramatic improvement in their own emerging market system and they are opening up to the world as we've not seen in the past.

Now, I testified the other day at the International Trade Commission on China's accession to the WTO. I did so with the condition that it be done on commercially viable terms. I don't believe that we ought to be negotiating among ourselves, but that the Administration should be taking those points to the negotiating table and trying to get the best agreement they possibly can out of the Chinese, and those will be liberalization of their system and the market.

The comment I made, Madam Chair, about self-fulfilling prophecy is that if we do not reach out, there are plenty of countries that are willing to do so.

If it's a unilateral decision on our part to declare that China cannot be—or cannot take the right fork in the road, proverbial fork in the road, to be in a more open system, one that can a more legitimate player on the international arena, then we may have the adverse consequence of actually pushing them in the wrong direction.

So I believe that we have tools available to influence much of their decisions.

Am I saying we should have no controls? Absolutely not. We believe there should be controls. We do have regimes. We have the missile technology control regime. We have other areas that we should be looking very seriously at and there needs to be pressure brought to bear on those.

But it's not a one size fits all type of position. As we indicated and I think each of the panelists have indicated that there is increased trade opportunities for the U.S. firms in China. It will be the largest market. There are opportunities that we think advance U.S. long-term national security interest, but also economic security interest by advocating greater cooperation.

And it's going to take a long time to do it.

Ms. ROS-LEHTINEN. Great. Thank you, Dave. Dr. Freedenberg, you state in your testimony that without a clear U.S. technology transfer policy toward China, that it would be difficult for us in the U.S. to draft and enact a new EAA.

What are your initial recommendations on this?

Dr. FREEDENBERG. I think one of the problems, and I tried to get at it in my brief summary, is there really is an ambivalence about China. China is seen as a technology transfer risk and it's clear that we have rules about it and that we enforce those rules, in fact, as I was pointing out in a much more rigorous way than our allies.

On the other hand, the Administration has also pushed very hard for U.S. companies to get a piece of a very large market. I think it's—I don't have a great deal of recommendations in my testimony. I don't have a number right now. I'd say it's the sort of thing where we need to most importantly look at foreign availability, give companies a legitimate right to petition the government to demonstrate that these products are available in sufficient quantity and comparable quality to the Chinese as a significant factor for the government to take into account when they make licensing decisions.

That's really not the case with regard to China right now and I provide statistics in my testimony that show that there are very large numbers of European, for example, in the area that I know, in European machine tools going into China, with—and those—that has never been used as an argument for allowing U.S. companies to sell to those entities.

Ms. ROS-LEHTINEN. Thank you, Paul. Mr. Menendez.

Mr. MENENDEZ. Thank you. Gentlemen, let me thank you all for your testimony. I was reading through some of it, your extended testimony.

I have heard today, in broad strokes, sometimes alternatively categorized your respective industries as either incredibly important not only for economic purposes, but for national security purposes, or money hungry treasonist entities.

Could you give me a sense of, on a serious note, what is the—what is the value beyond the economic values, which I think everybody can ascertain, what do the values of some of the industries you represent mean to us in terms of national security?

Mr. MCCURDY. Congressman, we represent almost the full spectrum of the electronics industry, from those that are involved in telecommunications, again, a very vibrant area that we see, consumer electronics, components which are the essential elements for any final system, all the way through the manufacturers of electronics for U.S. Government activities.

There are a couple points that I'd like to make. One is that the—when I was—and Toby and I were up here, it seemed that the U.S. Government was providing a lot of the leadership in technological

development, in R&D activities, and they were leading the entire economy. That's no longer the case.

As a matter of fact, in 1997, we passed an important threshold. There are now more—there's more commercial money being spent in space than there is government.

So, again, the innovation, and we see, as the world actually becomes a smaller place, because now we have communication satellites circling the earth, providing tremendous communication.

And that freedom of information, for those of us who had very extensive careers combating the former Soviet Union and the tyranny that was involved in that system, we believed that greater information, greater openness, giving the citizens the tools to reach out and access information was going to change that system.

We find the same today. If you look at this chart on internet users, talk about a vehicle to open up societies, this is the best. It's instant access to all kinds of information, both good and bad. But they're going to have a hard time blocking that and I think that's critical.

But the industries that I represent and we, as an association or an alliance represent perhaps the most vibrant industries in the world today. We are now—we've moved from the industrial age to the information age. We're really moving into the digital economy and the digital age and the technological development is at such a rapid pace, you talk about Moore's law doubling the semiconductor speed every 18 months, mentioned earlier, Mr. Manzullo, about the MTOPS, the incredible change in speed there.

I don't have it with me today, but I carry a little chip that's about the size of a quarter, which is a micro storage device that has the equivalent of 340 megabytes, a little thin, little chip, the equivalent of 246 floppy disks.

We now see fast cards and electronic cards. Again, the technology is changing. Not only the ability of this country to expand and the global economy to expand and for us to see the success of it, but also improve the quality of people's lives.

When we actually see growth rates remaining relatively low in the consumer sector, it's the one sector where the prices continue to drop and it's one of the most price-sensitive areas of the economy. Again, electronics, it improves.

And the last point I'd say is that in a way, ironically, it may be the private sector that is now subsidizing government technology because if these large defense firms that are providing information services, electronic systems to the Federal Government, if they don't have a vibrant market, then they're not going to continue the R&D rate that they're currently pursuing.

And the Government has not ante'd up at a rate which we think is in our long-term best interest. So the irony is that rather than the Federal Government subsidizing industry to take the lead in technology and technological development, it may be the reverse.

Mr. ROTH. If I can just quickly add to that, Congressman Menendez. When I came to this Committee, I was one of the people that said, hey, let's not let anything be sold overseas. We're going to keep everything from the Soviet Union.

But as time went on, I realized that that was the wrong approach. I learned from people like Paul Freedenberg and others

and good people like Roger Majack that you've got to look to the future and the way you look to the future, you've got to take a look at this technology. Technology is not a static thing.

What's a state-of-the-art today, 5 years from now is going to be obsolete. So what you want to do—this was the conclusion I came to—is that you've got to protect the tip of the iceberg, the most sophisticated technology, but the rest of it you want to let go, because you want to keep the state of technology in this country.

But once you deny our business to sell overseas and other companies, whether the German or French or whoever it might be, step in, then we will no longer keep that edge. And what gives us our protection is the edge, and that's why we want to keep that. Something like going pheasant hunting. I don't know. When I first went pheasant hunting, I couldn't get a pheasant and the reason was I was always aiming at the bird and then 1 day a guy came and said you've got to swing that shotgun and stay ahead of the pheasant at all times in order to hit it, and that's the analogy for technology.

You've got to stay ahead of the curve and once you don't, then you're going to lose.

Mr. MENENDEZ. I appreciate your answers. I hope you don't carry that chip with you when you go abroad. You take it out of your suit, you might be an export——

Mr. MCCURDY. It's commercial available.

Mr. MENENDEZ. Is that right? OK. Let me ask you one other question, for any of you wish to answer. If the current controls are continued, if we do not have a new Export Administration Act, what impact does this have on U.S. industries, their ability to export, as we turn the century?

Mr. ROTH. You're going to let the companies overseas become—have the state-of-the-art technology and then we will no longer have the leverage that we've had ever since I came to Congress.

Mr. MCCURDY. I would agree with that. But, again, in light of the testimony earlier today from Mr. Cox and Mr. Dicks and what Toby just said earlier about the tip of the iceberg, and the Secretary made the comment as well, you're talking about 11 or 12,000, I think was the number, applications for license and such a small percentage are those that are truly involved in the very sensitive areas.

You have a munitions list. It's very clear, very precise. There are some who would argue that that needs to be expanded perhaps. The gray area obviously is in the dual-use technologies and in the computer areas. Mr. Manzullo, I believe, last year or in the last Congress, considered removing controls on computers.

I mean, again, what is the—it is very, very difficult to define some of the dual-use areas and I think we have to keep that in mind as we look at this export regime.

It would be a mistake, I think Congress would be abdicating its responsibility if it did not reauthorize the law and make it a post-cold war, modern, realistic regime or system that, rather than inhibit our ability to succeed abroad, but actually increase it.

Mr. JOHNSON. To add to that, I think we have, after all, survived 4 years without one. We could probably go on a bit longer. I think perhaps one of the crucial problems is not reauthorizing, but one

of not having the debate within Congress, but to have greater consensus within Congress as to what export controls are all about.

The dangers that we have gotten into in the last few months in the last Congress, was that there clearly was no consensus and there was a tendency to run this way and that way. And that leaves us in an even greater area of grayness and uncertainty as to our future and our ability to plan two, three, or 5 years ahead.

So I think the debate itself will be extremely useful. As we look around, with Congressman Roth here, there aren't very many people who have gone through this debate in Congress. The last EAA, there were five or ten people in Congress who were here when that passed.

The Senate hasn't discussed this subject for a decade or more. I think you need that discussion to help bring to the table these issues and build a greater comfort level within the Congress and within industry as to where we're going.

Dr. FREEDENBERG. The other point is you really can't have a system long-term that is based on a COCOM international system. That doesn't exist anymore. You have a system that is much, much different in terms of how we interact with our allies, how we deal with the essential problem, which is China.

We've heard the debate about China. China is not dealt with adequately within the current multilateral system and, in fact, that causes great problems for our companies. Keeping our companies out doesn't necessarily help things and, in fact, it can harm us in the long run.

But we have to make a decision on what technology we want to go, under what circumstances, and that's really a debate that this Act really ought to stimulate and it's something that would be, I think, very helpful to undertake.

Ms. ROS-LEHTINEN. Thank you, Mr. Menendez. Mr. Manzullo, I'd like to recognize you for your questions, and if you could Chair the rest of the meeting.

Toby, Dana and I concluded that you should have aimed that shotgun at Mrs. O'Leary's cow, thereby sparing Chicago. You missed your true calling.

Mr. MCCURDY. Thank you, Madam Chair.

Mr. MANZULLO—[presiding]. Thank you for testifying. Toby, I want to just publicly thank you for the inspiration and the guidance that you've given to me personally as a role model and a mentor in this very, very difficult area.

I want to talk about jobs. I want to get right down to why we are here. I am terrified. I wish that every member could read especially Mr. Freedenberg's statement on the disgrace, the national disgrace of this country, which has the finest machine tool producers who are being shut out of the markets in China, on the five-axis machines. We're having problems getting four-axis machines into India.

I want your estimate as to the number of jobs, I hope some press is left here—I'm sorry—still here—on the basis of a billion dollars of exports equals 20,000 jobs. I want to know what our present policy is doing to send U.S. jobs abroad.

Dr. FREEDENBERG. China is the largest overseas market for machine tools, interestingly, but there is a real problem when you

can't sell sophisticated machines, which is the other part, they don't want to take that approach.

Mr. MANZULLO. Replacement parts, updates, right.

Dr. FREEDENBERG. I will get you the estimates. The substantial point is the U.S. machine tool industry, which is at a disadvantage in the 1980's, is now very competitive, exports fully a third of its output in the 1990's, and China is the largest market.

That is very important and it's going to become a much larger market. Boeing estimates, I think, 25 percent of their sales may be to China over the next decade. It's a very substantial commercial market and you want to—and those planes are going to be built increasingly on Chinese—at least parts of those planes.

Mr. MANZULLO. Dr. Freedenberg, can you give us a dollar—the word has to get out and if we can use this as a platform, the word has to get out as to what we're doing to destroy our jobs.

Dr. FREEDENBERG. One example we have is China is—we have 10 percent of the Chinese market and currently we have 20 percent of the South Korean market. The differential, there close to the same levels of economic development in terms of the sorts of products they're trying to produce, automobiles, aircraft parts, et cetera.

But that differential can be—I will get you the exact numbers.

Mr. MANZULLO. OK. Congressman McCurdy, do you want to take a stab at that, starting with computers and anything else?

Mr. MCCURDY. Certainly, Mr. Chair. I believe the real problem that you state is one that we use quite often, and that is that for every billion dollars in exports, you're looking at 20,000 U.S. jobs. As I indicate in my statement, we exported, in the electronics sector, $150 billion worth of systems and technology and products.

I think there has been a lot of focus on China itself. I don't think anyone is up here saying that China is an easy market. China is a very difficult market and there is a lot that has to be done. There's a lot of effort that has to be put in by the Administration and by the U.S. Government to try to open that market more successfully.

But it is clear that our competitors see that as one of the biggest opportunities in the world today and they are without any hindrance, without any limitations, spending the time and money in technology and investments to have the foothold in that market.

Mr. MANZULLO. What are we losing in terms of items that could be sold to countries that—a foreign availability, but which we can't sell because of our licensing requirements?

Mr. MCCURDY. In those areas, in some of the dual-use technologies, where there is foreign availability, it is clear that if we do not have access to that market, if we do not have a presence in that market, that market will in fact go to competitors.

There is no guarantee, even if we had a perfect export control regime, that we would be the dominant player in that market. I think our technology is better, higher quality, and more competitive in price, and, therefore, should be the commodity or product of choice, but that's not a guarantee.

If you look at who is doing business in China, but also throughout Asia and throughout the emerging markets around the world, all the major foreign competitors are there, especially in the telecommunications area, that we also represent.

Mr. Rohrabacher, I think, is aware as well that that is one of the—when they deregulated and are deregulating in foreign countries the telecommunications sector, that opened up the opportunity for the creation of thousands, of hundreds of thousands of jobs for U.S. telecommunications manufacturers.

When we are denied access to some of those markets, that has an adverse impact on those companies.

Mr. MANZULLO. Toby, did you want to respond to this?

Mr. ROTH. No. I think Mr. McCurdy has put it very well and I associate myself with his remarks and the other remarks of the panelists made here today.

Mr. MANZULLO. Applied Materials, which manufacture semiconductor manufactured equipment, lost a $3 billion sale to China due to export controls. NEC of Japan picked it up. I have—the district that I represent is one of the most exporting and very high in machine tools and the worst that could occur now is a drying up of machine tool exports, the same thing that happened in 1981, and that's when we led the Nation in unemployment at 26 percent.

Dr. FREEDENBERG. Let me give you just one example of something I've done. When I was over in Japan, I talked with a number of export control officials and I said, one of the—you've actually had fairly good arrangements with the Japanese in the area of super-computers. We had a bilateral agreement that worked fairly well. I suggested to the Japanese that we ought to begin bilaterally talking about what the limits ought to be on China, get some understanding among ourselves so that we don't undercut each other with—in the area of export, and then try to expand it informally within the Wassenaar agreement.

You can't have China, now that Russia is a part of us now, you can't have China officially as the objective, but you can get some understandings on what the export control levels ought to be. We really don't have those, and as a result, the U.S. Government from time to time can come down very hard on a U.S. company and have absolutely no assurance that their foreign competitor won't get the deal.

On the case you're talking about with Applied Materials, that's exactly the case. It's exactly the same specifications for the equipment that went in to China from NEC that would have come from the United States. That doesn't do us any good. That's a very good example of what we need to get some understandings with our allies about. So the export controls are not a factor with regard to the——

Mr. MANZULLO. What I would like to see, maybe Mr. McCurdy and Dr. Freedenberg, I would like to see a letter, perhaps a joint letter or individual letter—I want to quantify, present to the American people, present to the Members of Congress that because of this policy, the number of jobs that we are losing. China has 300 cities in excess of one million people. Twenty-five percent of those cities do not have airports. China is in the process of building I think right now 13 or 14 airports in the southern part of that country, with a goal of a new airport in every city. I mean, the opportunities for sales there and elsewhere are ripe.

Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Manzullo.

Let me just approach this from a different angle, and if my questions or observations appear to be naive, it's a reflection of my—the fact that I'm brand new to this Committee. But I find his conversation interesting.

Help me walk through. If—and I think this goes to the issue that Mr. Manzullo expressed his concern about. But if an American company makes a decision—or can an American company create a subsidiary and situate a plant or locate a venture, whether it's a joint venture, whatever the mix may be, in China to avoid the export control regime that currently exists? Is that doable under mergers and acquisitions, not only in this nation, but at, you know, the international level? How does this issue mesh in with the globalization, if you will, of our economy?

Dr. FREEDENBERG. You can use foreign technology, and frequently the foreign technology is comparable. So you can—I've seen U.S. companies end up, because of a sanction or a particular U.S. law, simply shift to a foreign operation, which, as long as it's not using exclusively U.S. technology—very frequently Europeans have their own technology that's comparable——

Mr. DELAHUNT. What concerns me is in terms of the national security interest, how would, again, this consolidation into national—I mean, we see the emergence of the multinational now. I mean, in terms of compliance, I mean, in the real world, you know, you talk about exclusive U.S technology. I mean, that gets real murky when we're talking about, you know, multinational corporations.

Mr. McCurdy?

Mr. MCCURDY. Well, Mr. Delahunt, a couple thoughts on that question, which I think is a good question. Many of the competitors that our industry faces are European. Many of those competitors have huge ownership positions by their governments, and their governments are actively out there supporting their export and their activities, whereas in our free market system, in our free enterprise system, government doesn't own, you know, an equity position in the companies, and it—but in many ways is restricting some of its ability to compete.

I was asked to give a speech recently at the U.S. Chamber of Commerce on industrial espionage, and as former Chairman of the Intelligence Committee, I had some recollection of some of the activity of some of our so-called friends and allies with regard to U.S. businessmen and business people traveling abroad and some of the risks that were associated there.

The second point is as far as the mergers, there's a limit to how large a corporation can really grow and be effective. I think you'll see a cycle——

Mr. DELAHUNT. I'm waiting for that time.

Mr. MCCURDY. I think you'll see a cycle, actually, where there will be more and more spinoffs. A number of the—the beauty of the U.S. system and U.S. industries—and it is true they are global in their span. As I said earlier, a third of their products are now exported. The beauty is the entrepreneurism, the innovation, the incredible rapid pace of market development and time to market. You don't see that anyplace else, and that's the advantage we have. But if you slowed that down, if you take that portion away from us, then all of a sudden, the others have a chance to catch up.

Mr. DELAHUNT. You know, I don't disagree. I guess what I'm trying to do is say that—I'm trying to buttress or support your perspective here by saying, I mean, joint ventures, there are so many different mechanisms to achieve certain ends that it causes me concern.

Let me just pick up on one point that—I think it was Mr. McCurdy that said this earlier, about—in terms of—your concern is, of course, that if export controls are so cumbersome, that we lose in terms of our technological edge because the investment in terms of R&D simply won't be there. You gave the example of public versus private satellite technology.

Have you seen evidence of that already happening?

Mr. MCCURDY. Oh, without doubt, yes. I mean, there is——

Mr. DELAHUNT. Because I think you made the comment about—and I was really taken aback by it, is that you now—I think your statement was that some of our global competitors are in fact ahead of us in terms of state-of-the-art technology. Maybe I'm reading into something that——

Mr. MCCURDY. They're comparable in many areas. There is no longer—we enjoyed the greatest era of prosperity after World War II because we were the dominant player, we had the leading technology, we had the infrastructure, we had the education system, we made the investments, and there really wasn't a competitor.

In this multipolar world that we live in today that is highly competitive, there are huge investments countries have taken on as a system to develop technology that, in fact, can compete. They subsidize their companies, they subsidize the exports. In the aviation section, you see it everyday.

And one point that my friend from California made earlier about industry, let me just say this where I respectfully disagree on one point. It's the U.S. businesses that in fact are concerned about long-term security, and they have been good citizens.

There's always an exception, there will be mistakes made, but I don't think it's because of greed. If anything, Mr. Rohrabacher, I believe that that incentive is what made this system so successful. That's what free enterprise is all about, that's what we're supporting. And it can operate in conjunction with national security. That's why you have a munitions list, that's why you should—ought to focus on those areas that are specific to threats that may, in fact, come back to haunt us.

Mr. DELAHUNT. Just one more question real quickly, because the focus has been on China today, and I understand that, but also on the Asian continent, we have a country the size of India. Any comments on, you know, the impact of the current system as it relates to how we do business, exports, in India. I think, you know, there's—that's an immense nation, obviously.

Mr. JOHNSON. In our industry is a good example of sort of unintended consequences. Because of the Glenn amendment and because of moving communications satellites to the munitions control list, we could not sell a commercial satellite launched on a Delta 2 rocket to India or Pakistan today, and there is no Presidential waiver authority. We have turned that market over to the Europeans until the Congress does something about the Glenn amend-

ment. No one intended on doing that, but that's what happened to us.

So you undercut—I don't mean you specifically—they—the system has undercut both the launch industry and the satellite industry in the United States because of sort of unintended consequences of treating commercial items as a military item. Not the military—I mean.

The other point I would have liked to have made in terms of trying to figure out jobs, it's a very complicated issue. One reason we focused on China is because if you take away that large market and you give it to the Europeans, there's a monopoly, then a number of things happen in other markets, and that's really part of the measure.

I remember when we did export sanctions and we denied Caterpillar sales of 700 pipelaying units to Russia. Comotzo moved in and within 2 years were marketing heavy construction machinery in the United States, and if you ride down the road today, you'll see Komatsu heavy equipment. It wasn't there until we did that. But you give a guy a free market with a monopoly price, bad things happen elsewhere. He's got a cash-flow to develop the next generation of products to get out there and market what you've taken away from the Americans.

I have a company that is in the satellite area being told—it was a supplier of components to French Company Alcatel—that they were going to design out American components now that we're on the munitions list because our strings on munitions don't stop.

Mr. MANZULLO. OK. Mr. Rohrabacher, I want to end at 10 minutes to six.

Mr. ROHRABACHER. OK. Well, I don't think I have that much time, but——

Mr. MANZULLO. Oh, OK.

Mr. ROHRABACHER. Let me just note in terms of the jobs issue, I noticed Mr. Freedenberg sort of hedged when he realized he was about to disclose that Aerospace jobs were being lost in order to sell your equipment to make other equipment.

Dr. FREEDENBERG. Yes.

Mr. ROHRABACHER. Who loses? The American Aerospace workers in my district, that's who loses.

Dr. FREEDENBERG. I understand that entirely. In fact,——

Mr. ROHRABACHER. Right.

Dr. FREEDENBERG.—I worked very hard first against offsets, which is essentially what——

Mr. ROHRABACHER. Yes. Let me just——

Dr. FREEDENBERG. I understand.

Mr. ROHRABACHER—[continuing]. Be very clear as I talk about losing jobs, the Chinese understand exactly how to create jobs in China and not in the United States, and part of the bit—the crux of this issue that we're talking about today was the Chinese insisting to these Aerospace executives that if you're going to, you know, launch your satellites, you've got to do it on our rockets, and then you've got to improve our rockets, and then these executives get lured into this because of the vision of the China market.

The vision of the China market, they say, you know, China is the market of the future and it always will be. In our whole history,

we've had people talking about the China market. The bottom line is, can you—can any of you gentlemen tell me who buys more from us? Who's bought more from us in the last 10 years—the 20 million people in Taiwan or the billions of people on the Mainland? Well, you know the answer: it's the people in Taiwan.

The fact is that up until recently, Taiwan bought more from the United States every year than the entire Mainland of China. That's not to mention these other countries. This is little Taiwan.

We have people who are stumbling over themselves in order to do business in a way that could jeopardize the national security of our country in order to get a part of the China market. Well, this dream is causing great damage to the security of our country. People can dance around the issue all they want; the crux of the matter is, we all know that Communist China could well be at war with the United States within 10 years unless there's some change of dynamics. Everybody knows that. Everybody is afraid to say it, afraid to talk about it.

What are you going to do? Are you going to say that China is going to be on a list? We're talking about the COCOM lists of the past. Are we going to knock it out? Everybody is afraid that, well, then maybe we destroyed our possibility here of being not only in the market, but we've destroyed the possibility of reaching out to China and letting them evolve toward democracy. Well, it's baloney.

Sometime, somewhere, people are going to have to come to the realization the people who control China hate the United States, they hate everything we stand for. When our businesses go over there and sell them our rocket technology or set up factories so that they're going to be able to compete with our Aerospace industry, they think we're weaklings and they despise us and they think we're degenerates because we are ending up giving their country in the long run the leverage they need to dominate the United States of America. If you don't think that's the attitude of these people, you haven't studied what these people are all about.

Now, I understand this dream that you've got. We're going to do more business with them because we have all these computers over there, and through the Internet, we're going to open up their eyes. I hate to tell you this, Communist people are not our problem—I mean, the Chinese people are not our problem. The Chinese people don't want a boot of oppression in their face forever. They don't want that. The Chinese people—Tiananmen Square spoke what they wanted. But you have a ruthless, factious state regime of people who know everything about the United States—they don't need the computers to find out—who are committed to what? To making $50–, $60– to $100 billion dollars in surplus with our trade with them every year in order to do what? To put our people out of work, not to give work to our people, to make sure that they can compete with our Aerospace industry and every other industry, and eventually to produce weapons of mass destruction that will threaten us. That's what they're doing. They're upgrading their military every year for the last 5 years in ways that put our country in jeopardy.

And the reason there's so much to-do about this issue is when we loosened our restrictions, with my approval, I might add, based

on the same arguments that you've presented us today, what happened? No, Mr. McCurdy, I'm afraid that those business executives that watch out for America weren't watching out for America.

I've investigated this myself for 6 months. I went to the contractors, I went to the subcontractors. People in those companies went to me and told me they were embarrassed and they were ashamed of their company for what they had done, and I won't name the companies that we're talking about, they were ashamed because they had spent the cold war trying to protect our country by developing the technology we needed for our own defense. And when Aerospace workers come to you on the side and tell you they know that they're company is engaged in something that is damaging to our national security, a Member of Congress better well pay attention to what's going on.

I'm sorry for getting upset, but that's just me.

Mr. MCCURDY. No, we appreciate your fervor, Mr. Rohrabacher. But if I may, just on one point, I think you have to be very careful when you categorize all of industry or all of an entire sector of the economy with a statement that, you know, so-called friends at the country club—in fact, it's U.S. industry that enabled this country to have the strongest defense——

Mr. ROHRABACHER. Sure.

Mr. MCCURDY—[continuing]. Without equal, without par.

Mr. ROHRABACHER. Dave, I think you can look at the record and I don't I've ever used the word all or industry or everybody in industry. In fact, I said earlier a member of the country club, and that doesn't mean everybody who is a member of the country club.

What happens when you're part of a little clique like this is you overlook something that your buddies have done. You say,——

Mr. MCCURDY. Well, Mr. Rohrabacher——

Mr. ROHRABACHER—[continuing]. Well, this guy has done—I'm not saying everybody has done it.

Mr. MCCURDY. Mr. Rohrabacher, we're not here to defend a particular company. If, in fact, there were violations, there is a system that will take care of that. What we're here to say is that don't let an exception—an exception—destroy what has been the fuel that has run one of the most dynamic engines of a modern economy ever in history.

Mr. ROHRABACHER. Sure.

Mr. MCCURDY. We have that today and we don't want to—and it's not foolproof, it's not free of potential risk. This is still a fairly volatile economy, and if you, in fact, are—if we're not careful and just take it for granted that this innovation and entrepreneurisum will go on forever, and that this phenomenal growth will go on forever, I think that's a dangerous assumption.

So all we're arguing for is that don't impose a system that was directed at an exception on the entire system and an industry that is—shares your patriotism and your concern——

Mr. ROHRABACHER. Dave, when I left this room, I went up to my office to talk to some people in Boeing Corporation, OK, and one of the things we just happened to talk about was that they're finding out all of these sales to China weren't turning out so profitable after all for their aviation industry. They got stiffed. And what happened when they got stiffed? They didn't order all the planes,

but they got all the equipment, didn't they, all those machine tools. So where do we end up? We end up with American workers who we're supposed to watch out for, we've given them all the tools they need to compete with our people to put our people out of work. Who's watching out for America?

What we're doing is we're letting these big companies go for the vision of a—not a long-term profit, but a short-term profit, because you can make a 25 percent profit if you get the right deal in China, where over in the United States, you know, maybe you'd only make 7 percent.

One last thought, and then I'll——

Mr. MANZULLO. I've got to get back to my office.

Mr. ROHRABACHER. I agree with Mr. Manzullo in that we should not be restricting——

Mr. MANZULLO. This is a slow motion.

[Laughter.]

Mr. ROHRABACHER. We should not be restricting sales of American technology that can be done—bought on the market. I agree with that.

Mr. MANZULLO. Amen. This Committee is adjourned.

[Whereupon, at 5:50 p.m., the Subcommittee adjourned.]

A P P E N D I X

MARCH 3, 1999

Testimony of
William A. Reinsch
Under Secretary for Export Administration
Department of Commerce

Before
The House International Relations Committee
Subcommittee on International Economic Policy and Trade
On Reauthorization of the Export Administration Act

March 3, 1999

Thank you, Madam Chairman, for the opportunity to testify on reauthorization of the Export Administration Act. The Administration has not had an opportunity to review this issue with you since May 1997, and many developments have taken place in the intervening time which should be considered, so I appreciate the opportunity to be here at the beginning of the session. The Administration is still working on formulating the details of its position on the legislation, and I look forward to working with you to achieve a goal I believe we both share -- the long overdue reauthorization of an EAA that will protect our national security in an era of economic globalization that has arrived in the wake of the Cold War's end.

Since the EAA's August 1994 expiration, we have maintained export controls through a combination of emergency statutory authority, executive orders, and regulations. Enacting a revised EAA will help exporters by bringing the law up to date with current global realities, minimize the possibility of legal challenges under current emergency authority, enhance U.S. credibility in international fora, and curtail the piecemeal export control legislation that is difficult for industry to understand and comply with.

Today, I would like to first describe why a new EAA is preferable to operating under emergency authority. I will then discuss the significant features of the Administration's proposed bill and H.R. 361, which the House passed in 1996.

The Need for a Revised Export Administration Act

Operating under the emergency authority of IEEPA means functioning under certain legal constraints and leaving important aspects of our control system at risk of legal challenge. In addition, it can undercut our credibility as leader of the world's efforts to stem the proliferation of weapons of mass destruction.

While I do not want to overstate the case, because we have thus far not faced these complications, and we will continue to pursue our export control policies despite them, at a minimum they are likely to consume increasing amounts of time and energy that could be better used to administer and enforce the export control system more effectively.

Legal Limits

In some significant areas, we have less authority under IEEPA than under the EAA of 1979. Foremost among these are the penalty authorities which are substantially lower, both criminal and civil, than those for violations that occur under the EAA of 1979. However, even the EAA penalties are too low, having been eroded over the past 20 years by inflation. The Administration's bill as well as H.R. 361 both significantly increased these penalties.

We rely on the deterrent effect of stiff penalties. The longer we are under IEEPA, or even the EAA of 1979, the more the deterrent erodes.

Another limitation of IEEPA concerns the police powers (e.g., the authority to make arrests, execute search warrants, and carry firearms) of our enforcement agents. Those powers lapsed with the EAA of 1979. Our agents must now obtain Special Deputy U.S. Marshal status in order to exercise these authorities and function as law enforcement officers. While this complication can be overcome, doing so consumes limited resources that would be better used on enforcement. Both the Administration's proposed EAA and H.R. 361 continued these powers.

Finally, the longer the EAA lapse continues, the more likely we will be faced with challenges to our authority. For example, IEEPA does not have an explicit confidentiality provision like that in section 12(c) of the EAA of 1979 or similar provisions in the Administration's proposal and H.R. 361. As a result, the Department's ability to protect from public disclosure information concerning export license applications, the export licenses themselves, and related export enforcement information is likely to come under increasing attack on several fronts. Similarly, the absence of specific antiboycott references in IEEPA has led some respondents in antiboycott cases to argue -- thus far unsuccessfully -- that BXA has no authority to implement and enforce the antiboycott provisions of the EAA and Export Administration Regulations.

On a practical note, we are also finding that the Congressional requirement to conduct post-shipment visits on every computer over 2,000 MTOPS exported to fifty countries is rapidly becoming a major burden. It forces us to divert enforcement resources to visit computers that do not need to be seen with the result that we have fewer resources left to focus on real enforcement problems. Unlike the computer export notification provision in the same law, the visit provision cannot be adjusted by the President to take into account advancing levels of technology, so we must seek relief from the Congress on this issue.

Policy Ramifications

The lapse of authority also has policy ramifications. Although we have made great progress in eliminating unnecessary controls while enhancing our ability to control sensitive exports, exporters have the right to expect these reforms to be certain and permanent. For example, while we are implementing the President's 1995 executive order making the licensing process more disciplined and transparent, a statutory foundation for that process would send an important message to exporters that these reforms will not be rolled back, and they will have the certainty they need to plan their export transactions.

In addition, failure to enact a new EAA that reflects the changed world situation sends the wrong message to our allies and regime partners, whom we have been urging to strengthen their export control laws. We have also been working with the former Soviet Union and Warsaw Pact countries to encourage them to strengthen their export control laws, but our credibility is diminished by our own lack of a statute.

Renewal of the EAA of 1979

Some of these same issues also militate against a simple renewal of the expired EAA. For example, as I noted earlier, the penalties have been substantially eroded by inflation. In addition, the EAA of 1979 is a Cold War statute that simply does not reflect current geo-political realities. Its basic national security control authorities are predicated on the existence of a single bipolar adversary and a multilateral regime, CoCom, that ended nearly five years ago. A renewal of the EAA of 1979 is not much better than operating under IEEPA.

Significant Features Needed in a Revised Export Administration Act

The Administration's Proposal

In February 1994, the Administration proposed a revised EAA. Granted many things have changed since then, but our overall goal was, and remains, to refocus the law on the security threat the United States will face in the next century -- the proliferation of weapons of mass destruction in a more complicated era than we faced during the Cold War -- while taking into account the growing dependence of our own military on strong high technology companies here at home developing state of the art products and, in turn, those companies' need to export to maintain their cutting edge.

To meet that goal, the Administration's proposal emphasized the following principles: 1) establish a clear preference for export controls exercised in conjunction with the multilateral nonproliferation regimes; 2) increase focus on our own economic security by greater discipline on unilateral controls; 3) simplify and streamline the licensing system; 4) strengthen enforcement; and 5) provide exporters with expanded rights to petition for relief from ineffective controls without impinging on the Administration's ultimate authority to make judgements that protect our national security.

Consequently, the Administration's proposal differed in several significant ways from the EAA of 1979. The control authorities reflected the trend towards international cooperation on nonproliferation through multilateral export control regimes instead of reliance on the Cold War distinction between COCOM-based national security controls and other foreign policy concerns. The criteria governing the imposition or extension of unilateral controls were made clearer. The licensing process was shortened and simplified. Enforcement was strengthened through increased penalties, greater authority for undercover operations, and revisions to forfeiture and temporary denial order authority. The unfair impact provision provided exporters with expanded rights to petition for relief from ineffective controls.

H.R. 361 - The Omnibus Export Administration Act of 1996

H.R. 361 was largely similar to the Administration's proposal, including updates in control authority to address current security threats, increased discipline on unilateral controls, and enhanced enforcement authorities. H.R. 361 also contained provisions consistent with Administration licensing process reforms.

H.R. 361's structure reflected the new challenges resulting from the end of the Cold War. As proposed by the Administration's bill, the basic control authorities were multilateral and unilateral instead of the national security and foreign policy authorities of the EAA of 1979. H.R. 361's new structure explicitly recognized the preference for compliance with international regimes that the U.S. either is a member of (the Wassenaar Arrangement, the Missile Technology Control Regime, the Australia Group, the Nuclear Suppliers' Group, and the Zangger Committee) or may help create or join in the future. We viewed H.R. 361's clear preference and explicit guidelines for multilateral controls as essential for achieving our nonproliferation goals without disadvantaging U.S. exporters.

Another significant positive feature of H.R. 361 was its increased discipline on unilateral controls. The determinations required by H.R. 361 for the imposition, extension, or expansion of unilateral controls required a more precise analysis of the anticipated and actual effectiveness of unilateral controls. This more precise analysis would have ensured that our economic security was not adversely affected by controls which did not significantly advance national security, foreign policy, or nonproliferation objectives. The Administration will likely want to suggest some changes to these provisions to ensure that unilateral export controls are available when they are in the overall national interest, consistent with the position we have taken on sanctions reform, but in general we agree with the need to exercise discipline in the application of such controls.

H.R. 361 also supported Administration reforms of the licensing and commodity jurisdiction processes. Its standards for license processing were consistent with the 1995 executive order, which provided for a transparent, time-limited review process that permitted all pertinent agencies to review any license application and raise issues all the way to the President if they desired. This "default to decision" approach has replaced the black hole into which licenses often fell, improving the system's responsiveness to exporters while also providing broader inter-agency review of license applications that enhances our ability to meet our national security, foreign policy, and nonproliferation goals.

One other area where H.R. 361 made significant improvements is enforcement by substantially increasing criminal and civil penalties and providing greater operational enforcement authority for undercover operations and forfeitures. These enhancements are particularly important in the current environment, with more diffuse threats, elaborate procurement networks, and suspect end users more difficult to identify.

Provisions of Concern

We did have concerns, however, about H.R. 361's terrorism, unfair impact, antiboycott private right of action, and judicial review provisions, which I will outline. We also believe that certain provisions raised constitutional issues.

The Administration shares the Congress' concern about terrorism, and we have taken a very hard line against terrorist states. However, H.R. 361's terrorism provision would have significantly reduced the Administration's flexibility to regulate exports to countries on the terrorist list to reflect unique or changed circumstances. Under it, for example, the Administration would lack the necessary flexibility to supply U.S. government (diplomatic, military, or humanitarian) operations, multilateral peacekeeping and humanitarian missions, International Atomic Energy Agency inspections, and activities of U.S. or third country nationals unaffiliated with the terrorism-list government.

The Administration opposed H.R. 361's unfair impact provision to clarify exporters' rights to petition for relief from burdensome and ineffective export control requirements. The provision limited U.S. exporters' statutory right to petition for relief by failing to include ineffective controls and competitive disadvantage as grounds for such petitions. Unlike the Administration's bill, H.R. 361 also exempted some other provisions from the unfair impact process entirely and failed to explicitly allow unfair impact petitions based on anticipated market conditions.

H.R. 361 authorized private actions for antiboycott violations. These actions could compromise enforcement of the antiboycott provisions of the EAA. Allowing suits for actual and punitive damages, whether or not a violation has been found through government enforcement action, could jeopardize the record of successful enforcement of the antiboycott law through inconsistent judicial interpretations, diversion of government resources, and private settlements that deny access to evidence.

We also believe that H.R. 361's judicial review provision needed to be clarified to ensure it would not inadvertently allow inappropriate judicial review of U.S. foreign and national security policies.

Finally, certain provisions of H.R. 361 raised constitutional concerns regarding the President's authority to conduct diplomatic relations and to act on advice from members of his cabinet.

The Administration is undertaking a review of its bill as well as H.R. 361, and we will report to Congress any proposed modifications or changes we might have.

Conclusion

We believe an EAA that allows us to fully and effectively address our security concerns while maintaining a transparent and efficient system for U.S. exporters is essential. As I have discussed, the Administration and the House, in H.R. 361, agreed on most of the important changes to bring the law up to date in light of current economic and proliferation realities. Our preference is that you take up reauthorization of an EAA that would build on the consensus already achieved.

I can understand, however, given the Committee's heavy agenda of other matters, that you may find it difficult to devote the time and attention needed to produce such a bill, which has not been without controversy in the past, to say the least. Under those circumstances, we would be prepared to discuss with the Committee an extension of the expired EAA to remedy some of the short term problems I discussed, particularly in the enforcement area. That is not a substitute for full reauthorization, but it will better enable us to do our business more effectively while Congress is deliberating.

Statement of Richard J. Hoglund
Deputy Assistant Commissioner, Office of Investigations
United States Customs Service

before the

Unites States House of Representatives
Committee on International Relations
Subcommittee on International Economic Policy and Trade

March 3, 1999

Good afternoon, Madame Chairman and Members of the Subcommittee. It is a privilege to appear before the Subcommittee today to discuss Customs unique role in enforcing U.S. export control laws and the passage of a new Export Administration Act.

Customs has a long and proud tradition of enforcing our Nation's import and export laws. This tradition has evolved from Customs earliest responsibilities for the collection of revenues on imported merchandise, to our role today at our Nation's borders in combatting the illegal international trafficking in goods which threaten the public safety and national security.

Customs is a leader in enforcing U.S. export controls. Beginning in the early part of this century, Customs was responsible for enforcement of provisions of the Neutrality Act dealing with trade in arms and support to countries involved in foreign conflicts. Our leadership in export enforcement has grown along with our country's leadership in world affairs. Today, Customs is a major participant in the Administration's efforts to prevent the proliferation of Weapons of Mass Destruction and conventional arms, combat international terrorism, and implement U.S. economic sanctions and embargoes.

Enforcement of the Export Administration Regulations is an integral part of Customs overall export enforcement program. We support the passage of a new Export Administration Act to strengthen our ability to enforcement U.S. export controls.

Export Controls Enforced by Customs

Customs is principally responsible for enforcement of:

- The Arms Export Control Act (22 U.S.C. 2778), which regulates the export of arms, munitions, and military equipment;
- The Export Administration Regulations (15 C.F.R.730.1 et seq), which regulate

the export of dual-use technologies and commodities, including those with application in the development of Weapons of Mass Destruction. Customs shares responsibility for enforcement of the regulations with the Department of Commerce Office of Export Enforcement.

- The International Emergency Economic Powers Act, or IEEPA (50 U.S.C. 1701 et seq), which regulates financial and other transactions with specified countries, individuals and other entities; and

- The Trading With the Enemy Act (50 U.S.C. App. 1), which imposes economic sanctions and embargoes on trade with Cuba and North Korea.

Operation EXODUS

To enforce these laws and regulations, Customs employs its unique border search and law enforcement authorities in processing international passengers, conveyances and cargo crossing our Nation's borders to insure compliance with export requirements, collect trade data, and detect export violations.

The focus of our export enforcement efforts has shifted to meet changes in the international threats that have confronted the United States. From the earliest parts of this century through the mid-1970s, the principal export control threat dealt with trafficking in arms and military equipment to countries involved in regional and internal conflicts. Customs efforts in those years focused on the illegal export of such goods from the United States to supply armies and groups involved in those conflicts.

In the early 1980s, the nature of the export control threat expanded to include efforts by the Soviet Union and its allies to acquire sophisticated Western technology for use in building their military establishments. In response to this threat Customs initiated a intensified enforcement program, Operation EXODUS, which enforced provisions of the Export Administration Act and other export control statutes to prevent illegal exports of munitions, strategic technologies, and shipments destined for sanctioned/ embargoed countries from the United States. Under Operation EXODUS, Customs significantly increased examinations of merchandise exported from the United States to insure compliance with export controls and interdict illicit shipments, and aggressively pursued investigations of criminal export violations.

With the dissolution of the Soviet Union, we have seen a shift in the threat once again. Today, we see, first, increasing efforts by the People's Republic of China to obtain sophisticated Western technologies to enhance their military capabilities. Second, we see rogue states attempting to develop nuclear, chemical and biological weapons and delivery systems. Third, we are faced with the potential for international terrorists to acquire weapons of mass destruction, arms, and other support for terrorist attacks against innocent citizens in both the U.S. and abroad. Fourth, we again see a rise in illicit trafficking in arms and military equipment, supplying international criminals and

political insurgents, as well as contributing to regional instabilities.

Customs goals under Operation EXODUS today are to prevent proliferant countries and rogue states, international terrorists, and trans-national criminal organizations from obtaining sensitive and controlled technologies and commodities, including Weapons of Mass Destruction materials and technologies, conventional munitions, and firearms; and from engaging in economic transactions which violate U.S. and international sanctions and embargoes.

Our objectives are to disrupt international trafficking in sensitive and controlled commodities through the interdiction of illicit shipments, and to dismantle criminal trafficking organizations supplying and supporting proliferant countries, rogue states, international terrorists and trans-national criminal groups.

Operation EXODUS has had a significant impact on preventing the illegal export of strategic and controlled commodities. Since its inception in 1981, Operation EXODUS has to date resulted in the seizure of over $1.2 billion in merchandise being exported in violation of U.S. export controls.

Customs Unique Role in Export Enforcement

Customs role in export enforcement is unique - in terms of our legal authorities and inspectional presence to enforce export laws and regulations at our Nation's borders; our experience in the processing of international passengers, conveyances and cargo; our expertise in examining and analyzing export documentation, and our familiarity with licit and illicit international shipping modes and routes; our automated commercial and enforcement systems and analytical tools; and our proactive, cooperative enforcement efforts with both U.S. and foreign law enforcement agencies.

Border Search Authority

Let me first briefly address Customs unique legal authorities. Chief among them are our border search authority. Customs may search, without a warrant, passengers, conveyances and cargo entering and leaving the United States to insure full compliance with all U.S. import/export requirements and to uncover violations. Customs is the only Federal law enforcement agency with this broad power. As a result, Customs is the only Federal law enforcement agency with the ability to interdict, at the border and without a warrent, merchandise being illegally exported from the United States. Every other Federal agency with export requirements, restrictions or prohibitions relies on Customs to enforce those provisions as passengers, conveyances and cargo cross our international borders.

Outbound Examinations

Customs maintains 301 ports of entry and exits throughout the United States. These include international airports, seaports, and vehicle and rail crossings along our land borders with Canada and Mexico. Customs has more than 7200 inspectors operating in these ports to process passengers, conveyances and cargo to insure compliance with all U.S. import and export requirements, detect violations, and seize merchandise imported or exported contrary to law. As noted above, Customs is the only Federal law enforcement agency with such broad border search authority. As a result, Customs Inspectors are the only Federal presence at our Nation's borders with the ability to examine, without a warrent, outbound passengers, conveyances and cargo to interdict and seize commodities being exported in violation of U.S. export controls.

Expertise in Processing Passengers, Conveyances and Cargo

Customs is a world leader in import/export processes and technologies. As an example, in the area of nuclear/radiological detection, Customs has worked closely with the Department of Energy and other agencies to develop and issue personal radiation detection equipment for use by our Customs Inspectors in detecting smuggled nuclear and radiological sources. We also integrate more sophisticated detection instrumentation into other examination technologies, such as mobile and fixed-site x-ray imaging equipment deployed in our ports. Customs leadership in this field is well recognized in the international community. The U.S. Department of State relies on Customs to provide technical expertise in the selection of detection and examination technologies to be provided to foreign customs services, and in the training of the use of that equipment, including training at the Customs/ Energy Radiation Academy, or RADACAD. We continue to work with Government and industry partners to identify emerging technologies to identify chemical and biological weapons and other threats which will provide us with stand-off, non-intrusive examination capabilities.

Customs position as the principal agency responsible for regulating the import and export of commercial merchandise gives us unique expertise in the processing of import/export documentation and the international movement of passengers, conveyances and cargo.

All import and export information accompanying international shipments of merchandise must be submitted to Customs. Our experience in reviewing and analyzing this documentation allows our Inspectors and Special Agents to identify discrepancies and other indicators of potential illegal movements of goods, and is a critical tool in selecting import and export shipments for examination under our border search authority.

Our long standing involvement in regulating the international movement of cargo gives us significant expertise in how goods move around the world - both in legitimate transactions, as well as in illegal transshipment, re-export, and smuggling cases. Again, this expertise allows our Inspectors and Special Agents to recognize warning

signs that an international movement is outside the norm - which may be an indicator of illicit trafficking activity, prompting an examination which may lead to an interdiction of Weapons of Mass Destruction materials or technologies, arms, or other contraband.

Automated Export System

Customs commercial and enforcement automated systems are key tools in our interdiction and investigative efforts. We are increasingly moving from a paper to an automated environment, including in the submission of import and export data. This shift to automation gives us better and more complete information more quickly - and, more importantly from a law enforcement perspective, allows us to use automated analytical tools to process that import/export data to spot anomalies and identify high-risk shipments for intensive examination, as well as patterns and trends which lead to the identification of international criminal trafficking networks to be targeted for investigation.

Customs manages the Automated Export System, or AES, which is the next generation of automated export data management. Utilizing AES, U.S. exporters, freight forwarders, carriers and other filers may submit automated data regarding merchandise being exported from the United States. This automated system will largely replace today's hard-copy Shippers Export Declaration and export manifest. AES provides for the collection of more timely and accurate export trade data, as well as for the ability to utilize analytical targeting tools to analyze submitted data to identify high-risk shipments for intensified examination by Customs. AES is operational at all Customs ports.

Currently, 150 companies are filing automated export data with Customs via AES, on behalf of 15,000 exporters. There are also an additional 360 participants developing or testing software to enable them to file utilizing AES. We anticipate AES participation will grow to 450 filers by the end of Fiscal Year 1999, and to 1050 filers by the end of Fiscal Year 2003. Filers currently utilizing the Department of Commerce's Automated Export Reporting Program to file export data will migrate to AES by the end of Fiscal Year 1999.

This increased participation will greatly enhance the use of AES as an enforcement tool. Licensing and regulatory agencies will be better able to track exports of licensable commodities. AES currently includes automated interfaces with the Department of Commerce, the Bureau of the Census, the Department of State, Office of Defense Trade Controls; and the Department of Treasury, Office of Foreign Assets Control. Further enhancements to these interfaces and interfaces with other agencies are being explored.

To further enhance AES's use as an enforcement tool, in March 1999 Customs will implement a new sea vessel module in AES. This module will capture booking/transportation data on a pre-departure basis, which will greatly assist in targeting of high-risk shipments for examination. Customs is developing similar

modules for other transportation environments.

AES's enforcement applicability is also greatly enhanced by Customs development of the Automated Targeting System, or ATS. ATS is a rules-based automated analytical tool which is designed to facilitate the targeting of high-risk cargo for intensive examination prior to export, through analysis of export data resident in AES. ATS will be deployed at 15 high-risk international airports by the end of Fiscal Year 1999.

Proactive Export Investigations

Finally, our experience in conducting proactive investigations of international trade violations directly contributes to our export enforcement efforts. Our experience and successes in conducting proactive investigations of criminal export violations continue Customs tradition of leadership in export enforcement. Customs investigations have resulted in the arrest, prosecution and conviction of hundreds of criminal export violators dealing in equipment ranging from sophisticated computer and precision machining technologies used for nuclear weapons development, to helicopters equipped for chemical agent dispersal, to nuclear reactor components.

By way of illustration, in 1998, Customs obtained the conviction of two individuals in Oregon on export and money laundering charges in connection with their attempts to export chemical compounds used in the production of nerve agents to Iran. In a second case, conducted jointly with the Department of Commerce, Office of Export Enforcement, we obtained the conviction of a major international computer manufacturer for violations of the Export Administration Regulations in connection with the unlawful export of computers to a Russian nuclear weapons laboratory. In a third case, also worked jointly with the Office of Export Enforcement, we obtained the conviction of a U.S. corporation for the illegal export of $3 million worth of aircraft parts to Iran.

In the past two weeks alone, Customs special agents have arrested two Chinese nationals involved in the attempted export of sophisticated aircraft and missile gyroscope systems to China, and obtained the conviction of a third individual for earlier, attempted exports of similar sophisticated aircraft guidance components to that country.

International Cooperation

A key element of our enforcement efforts is coordination and cooperation with our foreign customs and law enforcement counterparts. In fact, many of our most successful interdictions were effected by foreign customs and law enforcement agencies, based on our providing them with the information they needed to stop these shipments before the goods were delivered to their intended, ultimate destinations. Customs maintains 25 Customs Attache offices in countries around the world to coordinate our international enforcement efforts. As I previously mentioned, one of our export enforcement objectives is the dismantlement of criminal trafficking organizations

- not just in the United States, but in every country and venue in which they operate. Our foreign partnerships are essential to meeting this objective.

In addition to cooperation on international investigations, Customs provides training and technical assistance to foreign customs agencies in countries which may serve as sources or transit points of illegally trafficked nuclear, radiological, chemical or biological materials. This training and technical assistance is designed to assist foreign governments in strengthening border control and enforcement capabilities to identify, detect and interdict illicit shipments and investigate trafficking violations. This training, supported by both the Department of Energy and the Department of Defense, is provided to the countries of the Former Soviet Union, Eastern Europe, and the Balkans; and includes both in-country training as well as advanced training in examination and interdiction techniques at the Radiation Academy, or RADACAD, operated by the Department of Energy and Customs in Washington State.

Support for a New Export Administration Act

Customs enforcement of the Export Administration Regulations is an integral part of our overall export enforcement program. Customs support passage of a new Export Administration Act as a way to enhance enforcement of dual use export controls.

Since the expiration of the Export Administration Act, the Export Administration Regulations have been continued in force under the provisions of Executive Orders and the International Emergency Economic Powers Act, or IEEPA. While we have attained considerable success in enforcing the Export Administration Regulations under the provisions of the IEEPA, renewal of the Export Administration Act would both clarify the status of the Regulations, as well as ease the administrative burdens attendant to renewing the Regulations on an annual basis under Presidential Orders, modifying enforcement documentation to reflect current authorities, and similar requirements.

Prior H.R. 361

The Congress last considered passage of an Export Administration Act in 1996. That proposed legislation was introduced before the Congress as H.R. 361, which was passed by the House of Representatives in 1996 but was not considered by the Senate before the adjournment of that Congress.

Section 110 of H.R. 361 contained provisions for criminal penalties of for individuals convicted of violation of the Export Administration Act of 10 years imprisonment and a maximum fine equal to 5 times the value of merchandise illegally exported or $500,000, whichever is greater; and for corporations, a maximum fine equal to 10 times the value of merchandise illegally exported or $1,000,000, whichever is greater.

Section 113 of H.R. 361 contained various enforcement provisions, including statutory provisions to authorize Customs to conduct investigations of violations within and

RENEWAL OF THE EXPORT ADMINISTRATION ACT

STATEMENT OF FORMER REPRESENTATIVE TOBY ROTH BEFORE THE SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE, UNITED STATES HOUSE OF REPRESENTATIVES

March 3, 1999

Madame Chair and distinguished members of the subcommittee. It is a pleasure to have been invited to appear before you today. As you know, I spent eighteen years as a member of this subcommittee, including two as its chair. I devoted much of that time to analyzing and attempting to improve the Export Administration Act. I leave to others whether I can claim any particular *wisdom* when it comes to the EAA, but no one can doubt that I have a lot of *experience*--good and otherwise--in exploring its highways and byways.

By way of clarification, although I now am a consultant whose clients include firms in the high technology sectors, I appear here today representing no one but myself. Since leaving the Congress, I have gained additional knowledge of the industry perspective, but most of what I believe I can offer is a function of the years I spent serving in this House and on this subcommittee.

Do We Need an Export Administration Act?

3/3/99

Some have questioned whether we need an EAA at all. "We have been surviving adequately under the International Emergency Economic Powers Act, or IEEPA, for nearly five years," say these individuals, "so why open Pandora's Box by trying to write a new EAA? Better the devil you know than the devil you don't." I respectfully disagree. For one thing, IEEPA largely is a blank check for the Executive branch. Even if we believe that the current Administration has taken a reasonable and balanced approach to export controls, there is no guarantee that this will continue under this or a new administration in the future. Second, it is *Congress's* job to determine how government regulatory programs should operate. Congress abdicates that responsibility when it throws up its hands and leaves everything to the President. It may be hard to believe, but some aspects of the current export control regime are less than perfect. By writing an EAA that is more specific than the open- ended IEEPA, Congress can improve the situation in a way that the often stalemated Executive agencies cannot. Finally, Under Secretary Reinsch has pointed out a number of problems inherent in having export controls on dual use items based upon IEEPA rather than the EAA. These include the very real possibility that the Berman Amendment to IEEPA nullifies some aspects of export control and antiboycott regulations that relate to transfers of information, the possible weakening of confidentiality for business and trade information submitted to the Commerce Department in connection with export controls, and the lack of police powers for the Commerce Department's enforcement agents.

So I do believe--strongly--that we should have an EAA and should not continue to rely on IEEPA.

What Should Be the Goal of an EAA?

One goal of an EAA is of course to ensure that items critical to our military security do not reach the hands of our adversaries. I support that goal and I believe that American exporters do as well. It's important to keep in mind, though, that "national security" includes *economic* as well as military security. This is an era where our military budget has been reduced and our armed services increasingly are seeking to purchase commercial off the shelf items. We accordingly should take care not to make the potential market for such items so restrictive that the purchase cost to the United States government becomes unaffordable.

Put slightly differently, export controls impose costs. They cost American jobs and can weaken our economy. Sometimes that is a cost we must and should pay to ensure our security but we should never ignore the fact that there *is* a price.

A Better EAA

There are a number of improvements that a new EAA could bring to the existing system. Because I am limited to five minutes, I will focus upon the four that I deem most important:

1. Export licenses should be required only for goods and technologies that (1) are controllable from a practical standpoint, (2) are not available from our foreign

competitors, and (3) would make--if placed in the hands of the wrong people--a significant and material contribution to weapons proliferation or other legitimate, stated purpose of control.

- The EAA should discourage the imposition of unilateral export controls and other unilateral export restraints.
- The often sluggish export control system should rule swiftly on license applications and requests for policy determinations.
- The EAA should restrict, if not eliminate, the extraterritorial application of United States export controls.

1. **Export licenses should be required only for goods and technologies that (1) are controllable from a practical standpoint, (2) are not available from our foreign competitors, and (3) would make--if placed in the hands of the wrong people--a significant and material contribution to weapons proliferation or another legitimate, stated purpose of control.**

This my most important recommendation. If items, such as personal computers and mass market software with 128-bit encryption, are widely and easily available domestically, export controls will not keep them away from anyone who wants to obtain them. The same is true for items that are available from foreign competitors whose governments do not *in fact* impose controls as stringent as those imposed by the United States.

We also should limit our controls to items that are essential to our adversaries, as opposed to items that merely may be useful to them. Justice Potter Stewart said in the

Pentagon Papers Case that "when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless."[1] The same is true of export controls. If we want exporters to take our controls seriously and want other governments to adopt similar controls, our restrictions must be limited to truly significant items. Although controls have been reduced in recent years, we still overcontrol a number of areas (e.g., machine tools, encryption) and our allies have in some instances refused flatly to match our restrictions. Even controls that may have been reasonable when imposed, such as the computer thresholds established by the National Defense Authorization Act for Fiscal Year 1998,[2] quickly become obsolete in an era of rapid technological progress. A new EAA should ensure that our controls keep pace with the reality of technological progress and the globalization of knowledge.

While Congress should avoid micromanaging the system, you do have a responsibility to set appropriate criteria for imposing controls. Your criteria should include the three I've mentioned.

2. The EAA should discourage the imposition of unilateral export controls and other unilateral export restraints.

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[1] New York Times Co. v. United States, 403 U.S. 713, 729 (1971) (Stewart, J., concurring).

[2] Pub. L. No. 105-85, §§ 1211-1215, 111 Stat. 1629 (1997).

Faced with misconduct by foreign governments, public officials too often have seen the imposition of export controls as the only available alternative to sending in the Marines, at one extreme, or doing nothing, at the other. When other governments whose exporters supply identical goods and technology refuse to go along with our controls, however, the effect is like damming half a river. For the most part, the misbehaving government that is the target of our ire merely turns to other industrialized countries to supply its needs, while American workers and business people end up suffering. This hardly seems likely to convince a foreign government to change its ways.

To be sure, we all can conceive of circumstances where it may be important for the United States to take a principled stand *regardless* of what other nations might do. It seems to me, though, that such occasions should be relatively rare and that we have substantially overused unilateral controls in recent years. A new EAA should restrict such controls by allowing them to continue only for a brief period of time--say sixty or ninety days--unless Congress passes and the President signs a joint resolution keeping them in force.

3. The often sluggish export control system should rule swiftly on license applications and requests for policy determinations.

Inordinate delay in approving an export license can cost a United States exporter a sale just as surely as if the license is denied. The Commerce Department has been doing a good job of managing the dual use licensing system and should remain in charge. A

new EAA should require Commerce and its advisory agencies to meet time limits at least as strict as those currently imposed by executive order in ruling on licenses, commodity classification requests, and advisory opinion requests. The commodity jurisdiction process, which is run by the State Department, often takes a year or more to produce a determination. Congress should subject this process to a sixty day limit.

You also should ensure that interagency disagreements are resolved expeditiously and fairly. A new EAA should place the burden of escalating a disagreement on the agency that objects to the interagency determination, with the proviso that a failure to escalate a case within fifteen days will constitute acquiescence in the determination.

4. The EAA should restrict, if not eliminate, the extraterritorial application of United States export controls.

The United States takes the position that an item made in this country remains subject to our export control jurisdiction *forever*. No matter how long ago it may have been exported and no matter how many non-Americans may have owned it, our rules govern a "U.S.-origin" item in perpetuity. This is inconsistent with international standards. It is a position that our allies do not take as to their own products. In practice, it has two results: Either the foreign importer purchases the U.S.-origin item and ignores our "reexport" controls or--even worse--foreigners buy finished goods from non-United States sources and "design out" United States parts and components from their own products.

It is one thing to control an item en route from Country *A* to Country *B* where it came to rest briefly in *A* while intended for transshipment *B*. No one objects to that. It is quite something else, though, to say that a machine that has been owned for a period of time by a non-United States person in a foreign country, particularly a country that imposes its own export controls, remains subject to United States law.

Last August, the American Bar Association resolved that the United States should not adopt or maintain controls on foreign transactions of foreign parties where the only connection to the United States is either "the U.S. origin of transaction products, content or technology" or "ownership interests of U.S. nationals in the foreign corporations." This is a sound recommendation. It conforms to principles of international law, reflects appropriate comity among nations, and should be a part of the new EAA.

* * * * *

This hearing marks the beginning of a lengthy process--one that I hope will produce not just a new EAA but an EAA reflecting the realities of the Millennium rather than those of the Cold War. I see many important issues, beyond those I've mentioned, that the subcommittee ought to consider in drafting this legislation. I hope to continue working with you toward that end, and thank you again for asking me here today.

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Testimony of
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before the
Subcommittee on International Economic Policy
House International Relations Committee
U.S. House of Representatives

regarding
Dual-Use Export Controls Policy for the Information Age

March 3, 1999

I. INTRODUCTION

Thank you, Madam Chairman, for the opportunity to testify today on dual-use export controls policy for the Information Age. I represent the Electronic Industries Alliance (EIA). EIA is a federation of associations and sectors operating in the most competitive yet innovative industry in existence. We are comprised of over 2100 members representing 80% of the $550 billion U.S. electronics industry. Our member and sector associations represent telecommunications, consumer electronics, components, semiconductor standards as well as several other vital areas within the electronics industry.

I am also a former member of Congress from Oklahoma. During my 14 year tenure in this body, I served as Chairman of the House Intelligence Committee, as well as subcommittee chairman on the Armed Services Committee and the Science Committee. I continue to serve as a member of the Weapons of Mass Destruction Commission, a group of experts investigating how this country can combat proliferation. So I am well aware of how dual-use civilian technologies can be used for military purposes, and the important role of export controls to our national security. But I also recognize the severely limited effectiveness of export controls, as well as the vital importance of a strong and innovative high technology sector to keep our armed forces a step ahead of any adversary.

II. REALITIES OF THE GLOBAL ECONOMY

In my new capacity as EIA's President, I have the privilege of representing the most dynamic and competitive industry in the U.S. economy today -- actually, I should say, in the world economy today. The companies we represent operate globally, they think and plan in global terms, and they face intense international competition. The fact is, the days when U.S. companies dominated the high-technology industry are over. Similarly, the days when the domestic U.S. market could sustain the industry are also over. It has become almost cliche, but the global economy is a fact of doing business for us, and is a critically important concept to keep in mind as we formulate public policy in this area.

As any successful CEO will tell you, competing -- indeed, surviving -- in the global economy means exporting. The phenomenal success of the U.S. technology industry comes from its entreprenurialism, its aggressiveness, its willingness to compete -- all those free market forces that drive innovation. In this kind of business environment, tapping new markets before the competition does is the key to success. In 1997, more than one-third of what the U.S. electronics industry produced was exported overseas, over $150 billion in goods. That means more than a third of the 1.8 million employees who work for U.S. electronics companies depend on exports for their jobs, and the percentage goes up every year. Too often, we fail to recognize the profound implications of these facts, and I will get to those in a moment.

We must also recognize that our high-tech companies are the engine for technological innovation and economic growth in the world today. The U.S. economy is the most competitive in the world due in no small part to the amazing advancements our companies have achieved. Technologies which, not long ago, had only military or limited civilian applications are now pervasive in our society, and the greater economic efficiency stemming from this diffusion of technology has been the driving force for the remarkable prosperity so many Americans are experiencing.

The impact of export controls on how this industry competes in the global economy is substantial. They hold us back from competing. Unilateral export controls essentially force us to cede the playing field to our overseas competitors, or at least burden us to the point that we cannot compete effectively. The case of encryption controls provides the best example. No amount of government subsidies could do more to develop the European encryption industry than U.S. export controls have.

In short, we agree that when export controls are used properly, they can be a useful tool in combating the development and proliferation of weapons of mass destruction. But they are a tool to be used carefully and sparingly because of their severe negative impact on our industry and their often-limited impact on the target country.

III. PRINCIPLES FOR A NEW ERA

This Committee has a critical role to play in overseeing this country's export control system, and we appreciate your interest in taking a fresh look at the system, with an eye towards updating it to reflect the technological and political realities of the post-Cold War world. It is a daunting challenge, as you are well aware. This is a subject which has confounded policy makers for much of this decade, as evidenced by the fact that the Export Administration Act lapsed nearly five years ago. It is an important issue with high stakes for our national security and economic vitality alike, and we look forward to working with you as you continue in this process. With that in mind, I would like to lay out three very broad principles which guide our thinking on export control issues, and which I urge you to consider in your deliberations.

A. Export controls must reflect post-Cold War realities

The first principle is that U.S. export controls must reflect the new commercial and political realities of the post-Cold War world. The Cold War export control regime was based on the then-accurate premise that if you prevent U.S. companies from exporting a product to specified countries, you will have denied that country the use of that product or technology. But as I mentioned earlier, this premise no longer holds true. Whereas U.S. industry used to have a monopoly over the development and production of high technology products, today many countries produce the same, or even better, commercial technologies as U.S. manufacturers. Furthermore, the governments of our competitors do not place the same restrictions on their export activities. When U.S. companies are prevented from selling abroad, our competitors are willing and able to fill the void.

During the Cold War, national security threats came from clearly identifiable sources, that is the Communist bloc, and the western alliance was basically united in confronting these threats. Through the multilateral export control alliance called "CoCom," the western alliance cooperated to prevent exports of militarily sensitive technologies to the Communist bloc. CoCom controls were binding, as any member state could veto an export by another member state.

But with the collapse of Communism, the multilateral consensus collapsed with it. The threats to our national security are more diffuse, coming from rogue terrorist cells or a few outlaw nations. The successor to CoCom, known as the "Wassenaar Arrangement," reflects the disagreement among our allies regarding where new threats will come from. The Wassanaar Arrangement is nominally directed against only four states -- Iraq, Iran, Libya, and North Korea – and even in those cases, no Wassanaar member country has the power to veto any exports of other countries. The members have pledged only to limited information sharing, relating to technologies with obvious military applications. Despite extraordinary efforts by the U.S. government to strengthen the binding aspects of the Arrangement, this was the most our allies would agree to. That is the reality we are faced with as we consider unilateral export controls. The exceptions are the multilateral

regimes to control the spread of nuclear, chemical and biological weapons of mass destruction and their means of delivery. In these areas, strong multilateral export controls are more effective.

Our best example of the lack of international consensus, and the most important from industry's perspective, is China. While the U.S.-China relationship may be controversial in this country, there is no such dilemma for our allies. For them, China is a strategic partner to cooperate with on a wide range of political and economic issues, and is also the single largest emerging market in the global economy. Though I certainly do not condone China's record on human rights, I tend to agree with the assessment that if we treat China as an enemy, it will become an enemy.

I would like to make one last point on the Cold War. During that period, many in the high technology industry were dependent on the domestic market for sales. Today, virtually all commercial high-tech industry must compete globally to survive. This fact has important ramifications for our armed forces and our national security. Post-Cold War budget realities dictate that many defense suppliers can longer depend on the Pentagon as their primary buyer, meaning the military increasingly must depend on dual-use civilian technology. Yet, in certain sectors, the U.S. is losing its market share to other producers. U.S. national security may be harmed if the lead in dual-use commercial technology moves offshore as the result of unsound U.S. export control policies.

Clearly, we should not use Cold War-era solutions to solve Information Age problems. Unilateral export controls are Cold War solutions.

B. *The current export control system is appropriate and effective in protecting national security*

The second broad principle is that the current model for administering U.S. export control law is appropriate and effective in protecting national security. Currently, there are two systems for administering export controls, both of which provide for interagency review of license applications. The Commerce Department handles applications for the export of civilian and dual-use products and seeks advice from other agencies, including the Departments of Defense, Energy, State, Justice, and the intelligence community. The referral agencies participate fully in the license review process and have the ability to place conditions on license approvals, or recommend denial. This is the system which is authorized under the EAA.

The State Department handles applications for exports of explicitly military items, using a similar interagency referral process. Their system is authorized under the Arms Export Control Act, which is not up for renewal.

The license review processes in both systems can be improved, but essentially they are appropriate as separate functions. The Commerce Department review system ensures that commercial exports needed for U.S. economic strength are permitted to the

extent possible without threatening U.S. national security and foreign policy interests. The State Department review system ensures that military exports promote our national security and foreign policy objectives.

Many people are unaware that the Commerce Department conducts numerous follow-up checks on high technology exports to ensure that goods are being used where they are supposed to be, and for the purpose for which they were approved. The Department also audits U.S. exporters' record keeping and compliance with license conditions on a regular basis.

C. *High-tech companies strive to be good corporate citizens*

The third principle is that our industry strives to be compliant with the relevant export control laws. In fact, our industry devotes significant resources to be compliant with those laws. Many companies have elaborate and expensive export control compliance systems that include highly trained staff. This resource allocation demonstrates our industry's recognition that export controls are important and that there is a need to maintain a system that serves to protect our national security and foreign policy interests. This is especially true when it comes to preventing the spread of technologies to rogue nations.

While we support general government aims to create an effective control system, we also want to ensure that these controls are administered in a way that allows legitimate sales to go forward, while preventing those truly detrimental to our national security and foreign policy interests.

IV. GUIDELINES FOR AN INFORMATION AGE EXPORT CONTROL REGIME

EIA members have a keen interest in the substance and content of the Export Administration Act. Importantly, we have been involved with previous rewrite efforts and have worked closely with this and other relevant committees of jurisdiction. We recognize that there has been much debate within Congress, and within our own industry, as to whether there should be a renewal of the Act this year. I am not here today to debate the merits of this course of action but instead to discuss what we see as the key elements of any rewrite of the EAA. The following is a recitation of our priority export control issues.

A. *Curtailing Unilateral Export Controls*

U.S. foreign policy and national security export controls, when implemented without coordination or cooperation from our key allies, frequently place U.S. companies at a significant competitive disadvantage vis-a-vis foreign competitors. While our industry is not opposed to the use of export controls to punish rogue nations or

individuals, we believe that unilateral export controls have a very limited effect on a particular target country and unnecessarily hurt our most competitive industries.

We propose that if unilateral controls must be used, policy makers consider a number of issues in their formulation. First, we believe that this type of tool should be used sparingly and implemented for a finite period of time (perhaps six months) while our government negotiates with foreign governments on a broader multilateral implementation.

Furthermore, we advocate that our government follow certain criteria in their decision-making process. These criteria should provide a check-list of steps that policy makers follow before the controls are imposed, and help them evaluate the effectiveness of the controls. For example, if multilateral agreement cannot be reached, after a defined period, then the unilateral controls should be removed, and U.S. producers be allowed to export without restriction. The critical element here for policy makers to evaluate, in the implementation of controls, is the balance between maintaining the health of our economy, and the protection of our foreign policy and national security interests. These criteria would also establish a rationale for continuing the controls past their expiration date. Such a balancing test should address:

(1) The actual effect that the controls would have on the target country;

(2) The ability of the target country to obtain the technology from other sources;

(3) The potential effect that the controls would have on U.S. industry; and

(4) The level of multilateral cooperation that the U.S. is able to secure.

While we recognize that there may be instances where export controls are needed in order to punish a nation for their undesirable activities, we recommend that the controls be imposed under strict time limitations combined with a review mechanism that evaluates its effectiveness. If the controls are not deemed to be effective, then they should be discontinued.

Finally, for any export restriction that is imposed unilaterally, there should be a requirement that the government attempt to negotiate a multilateral agreement from other relevant industrialized countries. An export restriction is only as effective as its ability to limit a target country from obtaining the desired goods and technology. If the target country is able to do this by trading with other countries, the unilateral controls are rendered ineffective. However, if the U.S is able to gain consensus from other countries to prohibit the export of the technology, then the restrictions will be more effective.

B. *Forward Looking Foreign Availability*

As noted above, assessments of foreign availability are a very important aspect of the determination of the effectiveness of U.S. export controls. Accordingly, when a controlled product is deemed to be effectively available from foreign sources, U.S. law should allow for quick and decisive relaxation of restrictions on the relevant product. Our industry has much experience with situations where a product or technology was deemed to have been available from foreign sources by the Department of Commerce, however, by the time that the assessment had been completed, the product life cycle of the technology had already passed and U.S. manufacturers had missed out on an important foreign sale.

A strong foreign availability assessment process is an essential part of any rewrite of the Act. These assessments ensure that U.S. export controls are not implemented in a vacuum and are effective in light of today's global realities. In essence, they are export control "reality checks" that make our control system relevant.

In addition to supporting a strong foreign availability system, EIA proposes an additional element: The ability of these assessments to take into account what technological levels will be in the future. This is called "forward looking" foreign availability and it provides for a process by which government analysts make reasoned assessments of where selected technology is expected to develop in six months and then propose relaxation of the relevant export controls. Such a regime would address the problem that many find with the current foreign availability process, in that the entire analytical process can take months for conclusion. Meanwhile, valuable sales opportunities could be lost by U.S. firms. A forward looking process would eliminate delays through a prospective determination of future technology levels which would trigger appropriate adjustments to control levels before they had a detrimental effect on U.S. industry.

Additionally, we believe that the Department of Commerce should remain central to this process. This agency has a successful history in making these determinations.

C. *Indexing of Control Levels*

Related to the notion of forward looking foreign availability is the concept of the indexing of controls levels. This concept is especially important for the high technology industry because of the extremely fast pace of today's technological development. While at one time product life-cycles were a year or longer, today our most competitive companies find themselves faced with product life-cycles of six months or less. The brevity of these life cycles necessitates that export controls are fashioned in a way that they are able to keep up with technological changes. This problem is most apparent in the computer manufacturing and internetworking sector.

The most effective way to solve this problem is the creation of an indexing system that would peg U.S. export control levels on products (such as computers) on current levels of technological sophistication of products on the market. This indexing system would include an assessment of the most technologically advanced system on the market at the time and then calculate a control level that reflected an appropriate percentage of that level. If implemented, U.S. export controls would be truly reflective and responsive to industry developments. Such a system would not have a deleterious effect on national security because control levels would reflect the current global market for the technology and would also reflect foreign technological developments.

D. *Repeal of FY '98 NDAA Computer Controls*

Related to our indexing proposal is our desire to see the recent changes to computer export controls repealed. As a part of the FY 1998 National Defense Authorization Act (NDAA), export control restrictions on computers were significantly increased. The provisions of this authorization included mandatory review of exports of relatively low level computers to a number of significant countries.

This provision is important for our discussion because it does not reflect the reality of current technological development, and because it does not take into account the foreign availability of high-performance computers world wide. The licensing requirements contained in this legislation places significant time burdens on companies that prevent them from exporting their most competitive products in a timely manner. In addition, the provisions also place restrictions on how the Department of Commerce can respond to new developments in computer technology. Instead of being able to adjust control levels as new developments warrant, lag periods are built into the control system that result in 6 to 12 months delays before any changes can be made. Such delays could wipe out the advantage U.S. firms have in marketing their best technologies and provide foreign competitors an opening to sell their products without the competitive threat from U.S. manufacturers.

E. *Reform of export screening requirements*

The United States, alone among exporting nations, publishes extensive lists of individuals, companies, and organizations with whom commercial business is prohibited from dealing. These lists, published separately by the Departments of Commerce and Treasury, now comprise nearly 3,000 entries and are expanding at a staggering rate.

While customer screening based on these lists is not a formal government requirement under most circumstances, U.S. companies are completely liable for violations of U.S. export regulations should they engage in any business transaction with a sanctioned party in any location around the world. This liability exists regardless of the size of the transaction or the commodity involved. As a consequence, extensive, costly and time consuming screening of all U.S. economic activity overseas is a requirement, as it is the only means of achieving the absolute compliance required by U.S. regulation.

While customer screening can be a valuable export control tool, current U.S. requirements are bureaucratic, overreaching, costly, and strategically useless. Current requirements hamper global commerce over the Internet, and in so doing, threaten the future of electronic commerce, American high-technology leadership, and U.S. jobs.

We propose eliminating liability of non-sanctioned U.S. persons for engaging in transactions with Department of Commerce Denied Parties and Treasury Department Specially Designated Nationals when such transactions are limited to:

(1) Transfers of $5,000 or less and would not otherwise require an individual validated license (IVL); OR

(2) Field service activity (repair, adjustment, or modification or upgrade of previously exported commodities) and would not otherwise require an IVL; OR

(3) Transfers of software or technical data that would not otherwise require an IVL; OR

(4) Transactions conducted or initiated on the Internet, via telephone ("tele-sales"), or through direct mail, that would not otherwise require an IVL.

We also propose eliminating liability of non-sanctioned U.S. persons for engaging in transactions with Department of Commerce Denied Parties and Treasury Department Specially Designated Nationals when such transactions have been screened electronically using commercially available name-screening software.

These exemptions would not apply if the exporter had knowledge obtained in the normal course of business that the goods or technology would be used in, or diverted for use in, a project of proliferation concern.

F. *Ensuring reasonable review periods and escalation of disputes*

The Departments of Defense and State, as well as the CIA, each have the right to review any export license which the Commerce Department handles. In addition, the Justice Department may review any encryption license, and the Energy Department may review any license dealing with nuclear-related technology.

Over the past several years there have been relatively few instances when licensing officers from each of the different departments have disagreed on whether or not to permit a particular export to go forward. In situations where disputes do arise, the case is escalated to progressively higher levels of authority, first to mid-level political appointees and theoretically up to the President for resolution. The departments have specified periods of time to review the licenses and escalate the case if necessary. The point is, no agency at the lower bureaucratic levels has complete veto power over an

export and, equally important, cannot stonewall a case indefinitely, but each has the power to raise objections and make their objections known.

EIA supports this basic procedure, and we believe agencies are already given more than sufficient time for license reviews. In an era of "just-in-time" manufacturing, the drawn-out export licensing process often imposes unreasonable delays, costs, and uncertainty on U.S. companies. Bureaucratic delays of weeks or months -- and the uncertainty that goes with it -- seriously handicaps our ability to market our products. If dependability and speed are important considerations for our overseas buyers, which is often the case, they will opt for our foreign competition because U.S. companies are viewed as unreliable suppliers. Thus, we cannot support any proposal which grants an agency unreasonable authority to delay or veto an export license.

G. *Updating Penalties*

Currently the Department of Commerce has means to financially punish those companies which fail to abide by export control law. These penalties, which can be imposed for each infraction of the rules that have been violated, can amount to a significant financial strain on a particular company. While EIA is not opposed to the assessing of penalties on illegal behavior, we are concerned if current penalty levels are increased to such a prohibitive level that relatively minor infractions of the regulations result in fines that could put them out of business. Particularly when selling mass market products, companies fear facing overwhelming liabilities for a minor infraction multiplied thousands of times. As the regulations have become increasingly convoluted, the danger increases even more.

H. *Private Right of Action*

In past congresses, there has been efforts to create a private right of action for anti-boycott measures. In particular, during the last rewrite effort of the EAA, an amendment was added that created a federally allowable cause of action for tort claims of individuals who believe they have been damaged by the activities of companies that abided by foreign boycotts. This private right of action would be problematic for many EIA companies in that it creates a right to sue even before a company has been determined by the Department of Commerce to have engaged in the alleged boycott activities. EIA believes that such a provision would only add to the potential costs that companies must face in their international dealings, and could harm their ability to conduct legitimate sales overseas.

I. *Encryption Reform*

EIA asserts that a more balanced encryption policy is necessary -- one which recognizes the interests of government, the high-tech industry, and corporate and individual users. While the business community recognizes the importance of keeping potentially dangerous technologies out of the wrong hands, the government must

similarly recognize the importance of a dynamic and innovative high-tech industry to our economy, and not incidentally, to our national security. We believe that the national security vs. economic security arguments present a false choice, and that a well-balanced and realistic compromise is within reach.

The basis of such a compromise could include four basic elements. First, the government needs to significantly ease the restrictions on low-level and mass market encryption software. It was not very long ago that encryption was a solely military application, and therefore easily controlled, but to continue imposing onerous controls on software which anyone can purchase at the local shopping mall just does not make sense.

Second, the law enforcement and national security agencies could better define their access requirements, thereby allowing industry to develop a variety of marketable solutions, as well as enabling the Clinton Administration to finally abandon its key recovery policy.

Third, our new policy needs to differentiate between the increasingly numerous uses for the technology, such as for voice communications, data transmission, and in consumer electronics, with appropriate controls on those applications that clearly present problems for government, and decontrolling the rest.

Finally, U.S. policymakers need to recognize the futility of unilateral export restrictions, which serve only to damage our domestic industries while doing little to protect our national security. Only when we encourage our allies to develop meaningful multilateral controls can we hope to prevent the bad actors from acquiring these technologies.

The bottom line is that our industry is willing to accept restrictions on encryption exports if the controls are reasonable, if they are effective at addressing the problem they are meant to solve, and if they do not impose unnecessary, overly burdensome requirements. We believe that by implementing these basic proposals, the Administration's legitimate concerns can be addressed, the U.S. high-tech industry will be allowed to compete globally, and users will have the security they need.

J. *Confidentiality of Business Information*

As part of the licensing process, companies are often required to submit very sensitive business information to the government. Under the EAA, the Department of Commerce had the authority it needed to keep that information confidential. However, under the International Emergency Economic Powers Act (IEEPA), the Department no longer has sufficient authority to guarantee confidentiality. Companies fear that, if the Commerce Department is challenged under the Freedom of Information Act, it could be required to release companies' trade secrets. The Department's authority has not been challenged in court yet, but it remains a legal possibility we would like to see preempted.

K. *Office of Foreign Assets Control (OFAC)*

The Office Foreign Assets Control (OFAC) plays an important part in the overall export controls process. This office regulates trade in financial instruments and also the implementation of U.S. export control sanctions against selected countries. EIA member companies appreciate the importance of this office, however, believe that it is important for this office to be responsive to the needs of the industry. As a result, we advocate the creation of an industry advisory committee to provide guidance to the office on issues related to the regulations that they implement. Such an advisory committee would be similar to those currently in place advising the Bureau of Export Administration and the Department of State on critical export control regulatory matters

L. *Deemed Export*

EIA encourages changes to be made to the current policy regarding the hiring of foreign nationals. Many of our companies have been troubled by the current interpretation of U.S. export control law which makes it increasing difficult for our companies to hire foreign nationals. We believe that a "deemed export" only occurs when the hiring company is aware that the foreign national in question will be exporting the acquired technology.

V. CONCLUSION

As we enter the new millennium the challenges facing our high technology companies will no doubt change. Unlike the middle part of the century when the U.S. electronics industry was at the fore front of technological innovation and development today, there are many potential challengers to our economic might. U.S. export control policy should not serve to disadvantage these interest at such a critical time. It is important also to recognize that the Cold War is over and that while or nation faces new threats they are different and necessitate a different approach from export control regulators. We hope that your rewrite of this statute will reflect these realities.

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THE FUTURE OF THE EXPORT ADMINISTRATION ACT

Testimony by Joel Johnson, Vice President, International
Aerospace Industries Association
Before the House International Relations Committee
Subcommittee on International Economic Policy and Trade

March 3, 1999

EJJ 3/3/99

Introduction

The Aerospace Industries Association is pleased to have the opportunity to present its views on the future of the Export Administration Act. AIA is the trade association that represents the major manufacturers of commercial and military aircraft, helicopters, missiles, satellites, engines, and related aerospace subsystems. It might be noted that the industry in 1998 exported products valued at $59 billion, and its positive sectoral trade balance of $37 billion is the largest of any manufacturing or agricultural sector in the U.S.

The Subcommittee is certainly to be commended for turning its attention to the issue of the long dormant EAA. The hearing provides an opportunity to discuss what might be done to quickly put in place an EAA that reflects the passing of the Soviet Union and other political developments, as well as changes in technology, since the original EAA was enacted. It also offers an opportunity to begin to lay the groundwork for a major overhaul of export control legislation, regulation, and administration that would be appropriate for the twenty-first century.

Background

During the Cold War, the U.S. was willing to sacrifice economic interests for the sake of limiting the ability of the Soviet Union to improve its military capabilities and to discourage other countries from joining the Soviet camp (or punishing those that did). The Soviet Union has now collapsed and there is greater awareness that both the economic welfare and security of countries in the future will increasingly depend on their ability to compete in the global marketplace. Thus the tradeoff between security and economic benefits has become more complex.

At the same time, the distinction between military and commercial products has become less clear. The military is expanding the share of its budget that goes into such activities as communications, data processing, imaging, and simulation, all areas of accelerated commercial activity. Furthermore, in order to hold costs down, the military must turn to standard or near standard commercial products to meet many of these needs. But lower costs and rapid technological innovation in the commercial sector are only possible for companies producing for a global marketplace, with the flexibility to rapidly penetrate new markets and to take on foreign partners.

These changes are reflected in the aerospace industry. Ten years ago over 60% of our business was with the Department of Defense, and the U.S. government overall accounted for three-quarters of our sales. Today the government accounts for about 40% of our sales, and of the remainder; foreign sales account for 75%. Commercial space activity is our fastest growing sector, with sales having jumped from 1% to 9% of sales in the past decade. Increasingly the Department of Defense looks to our commercial research, development, and products to meet Department of Defense needs, and to our foreign sales of military equipment to keep crucial defense lines open and to reduce unit costs to the U.S. military.

The philosophical underpinnings, legal structure, and administrative framework for U.S. export controls, which are intended to deal with such technology, and external threats have not changed at a comparable pace. As a result, there are too many export licenses required and too many agencies involved in the review and administration of such licenses. The version of the EAA passed by the House in 1996 was at least a start at bringing the law into conformity with current political and technological reality. This testimony will briefly review the nature of our current control structure and identify several safeguards industry would like to see in any revised EAA or other new export control legislation.

What and Whys of Controls:

There would seem to be three reasons for imposing export controls, with each reason encompassing a different but often overlapping cluster of products:

- Arms: The subject of arms transfers involves security, but also foreign policy and public perception. We wish to help our friends protect themselves; we also do not want to compromise U.S. weapons systems or have them used against us. Unlike nonlethal equipment, even if we know countries will obtain a comparable capability, we may not want to make the equipment available from U.S. sources. Having U.S. weapons used against American troops or even in unpopular internal or external disputes would be considered unacceptable, even if there is no difference between the U.S. system and other foreign options. Furthermore, selling weapons is often regarded as an U.S. endorsement of a government. Thus there will need to be a specific statutory framework for weapons, however defined, with criteria that are different from other export control systems.

- National Security: During the Cold War, we wanted to prevent technology from reaching the Soviet Union which might assist its defense industry produce better weapons, even if that technology had legitimate civilian applications. Today we still wish to withhold certain technology from Russia, but also from other states in which technology might be used for such purposes as the design and production of conventional or unconventional weapons and delivery systems. However, if a technology is widely available from other uncontrolled sources, it makes little sense to deny Americans the ability to export. Moreover, selling commercial products to a country carries less emotional baggage than selling weapons. Thus a new system will presumably need some controls focused on security, but with greater emphasis on multilateral controls and industry safeguards than is true for weapons.

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- Foreign Policy: The U.S. has historically imposed controls for foreign policy reasons as a means of pressuring or punishing other countries. This has ranged from nearly complete embargoes lasting decades, to short lived sanctions such as on grain sales to the Soviet Union. Most analysts believe export controls are almost always ineffective in accomplishing foreign policy objectives while being costly economically, particularly when controls are imposed on a unilateral basis. A new legal framework would almost certainly include provisions for such controls, but these should be sharply limited with the safeguards outlined below.

Currently the EAA is basically responsible for the second two categories. Yet the last Congress transferred a clearly commercial product, communications satellites, back to the munitions list, as if it were a weapons system. On the other hand, foreign policy controls, which one might think were the province of the State Department, are administered by Commerce. Both State and Commerce rely on the Department of Defense for advice on technical matters. Indeed, most of the 45,000 licenses the Department of State issues each year have little to do with foreign policy concerns with arms sales, but rather technical concerns with the transfer of weapons, parts, and technology. The blurring of the distinctions among weapons, technology, and foreign policy is likely to become even more complex in the years ahead, which certainly leads to the question as to whether current law, including a modified EAA, is still appropriate.

Legal Framework:

Several laws currently provide the statutory framework for export controls. In addition to the Export Administration Act, the Arms Export Control Act (AECA), the Trading with the Enemy Act and the International Emergency Economic Powers Act (IEEPA) are also used to control exports and international transactions.

These laws come under different jurisdictions in the Congress, and are not necessarily under parallel committees (e.g., the EAA is under the House International Relations Committee and the Senate Banking Committee). The laws are not always mutually consistent, and ascribe primary administrative authority to different agencies. A strong argument can be made that in the long run all export and financial controls ought to be consolidated under a single permanent act.

Administration:

Currently the Department of State administers the AECA; Commerce the EAA; Treasury the Trading with the Enemy Act; Treasury and Commerce the IEEPA. This has resulted in overlapping and confusing regulatory systems, often for the same goods, technology and services. It has also led to unique and duplicative licensing forms, administrative staffs, and computer systems. Congress might examine whether a one agency could serve as a single administrative shop for all export licenses. This would provide industry with a consistent, more user-friendly regulatory system, a "one-stop shop" for license applications, and hopefully lead to a single computer system and reduced number of forms and data collection.

Assigning the responsibility to receive and process license applications to one bureaucracy would in no way be intended to alter the policy responsibility or involvement of specific types of license applications. Statute and executive order could clearly delineate which agency had primary responsibility for policy for each type of export license, which agencies had a right to participate in the license decision process, and how disputes among agencies would be resolved.

Licenses:

From industry's perspective, far too much time is expended by government officials and industry employees handling license applications for exports of parts, technical data, and end items which are of a routine nature or to countries which are certain to be approved. All too often license applications are even staffed to several agencies for "information" or courtesy where there is clear policy precedent that the licenses will be approved.

We suggest examining at least three approaches that might reduce the time and expense of the licensing process, and assure government personnel are used only to look at license applications that involve real policy issues:

- Program Licenses: When a license is granted for the sale of a specific end item, the license could also provide authority to allow a company to report after the fact on all subsequent shipments of spare parts and technical information related to the sale which do not alter the capabilities of the equipment. Companies could provide annual reports to the administering department, and the government could at any time rescind the program license if circumstances warranted. If a foreign partner or customer should request technology or equipment outside of the scope of the project license, the company would have to request separate license approval.

- License Free Regions: Licenses might be eliminated for a range of products for countries that maintain similar export restraints as the U.S. Such groupings might include the European Union, and members of various export control organizations, such as the Australia Group and the Wassenaar Arrangement. Similarly, certifications involving transfers of U.S. origin goods to third countries might also be eliminated for transfers to countries or groups of countries that have similar export restraints to those of the U.S.

- Self Policing: The U.S. government licensing agency might certify individuals in companies to issue licenses on behalf of the federal government for certain types of products, such as spare parts, technology or equipment required for a joint program, or other activities involving a relatively high volume of licenses with a minimum policy content. The Federal Aviation Agency (FAA) has such a program with aerospace manufacturers in which designated company employees are delegated authority on behalf of the FAA Administrator to perform certain inspection and certification responsibilities. Obviously such companies would have to have a strong compliance record, and such employees would be required to keep appropriate paperwork, provide notifications of decisions to the government, and be subject to government audit.

Industry Safeguards:

Industry urges that a revised EAA, and any future new legislation, should provide certain safeguards, many of which exist in one form or another in current law. These would include:

- Foreign Availability: Except for very unusual circumstances, (mostly related to lethal military equipment), U.S. companies should be allowed to sell products that are, or are expected to be, available from other sources. Shifting the source of supply does not punish the importer, it punishes the exporter. A system to judge foreign availability should be rapid and look at future as well as current availability. Some product life cycles, particularly in the electronics areas, may be as short as eighteen months. A decision made after foreign competitors have a strong foothold in a market is not helpful.

- Contract Sanctity: In general, companies should be able to honor existing contracts, except when multilateral sanctions cut all contracts. Under circumstances where contracts cannot be honored because of government controls, any non-performance breach of contract penalties owed by U.S. companies because of U.S. Government actions should be compensated by the federal government.

- Support of Formerly Exported Products: As a general rule, companies should be able to support products previously exported to a country, even if new sales are prohibited. This is particularly true for product support related to safety, even of military systems. This is especially important to my industry. I might also note that commercial aircraft, even of countries under U.S. sanctions, frequently carry passengers who are citizens of the United States and other close allies, and fly over the air space of a great many countries.

- Multilateral vs. Unilateral Controls: In general, unilateral controls should only be imposed as an interim measure leading to multilateral controls. There should be a time frame within which the U.S. would succeed in gaining substantial multilateral support for controls, or U.S. controls would be terminated.

- Economic Impact: Export controls are politically attractive because they are essentially an unfunded mandate - the cost of the controls is imposed on labor and industry and is not reflected in the federal budget. We suggest several remedies. Imposition of unilateral export controls should require a Congressional Budget Office estimate of the cost to the economy of such controls. Workers displaced from their jobs by such controls should be eligible for the same worker training and relocation programs as workers affected by imports.

- Time Limits: Economic sanctions, particularly unilateral foreign policy controls, should be of limited duration. The U.S. has in place a large number of export sanctions which have clearly not accomplished their objective, but there is no politically acceptable way to remove them. Sanctions that automatically terminate unless a new decision is taken help alleviate that situation.

- Licensing Processing Time: Except in unusual circumstances, there should be some time deadlines imposed on the process by which licenses are reviewed by the Department of Commerce and other agencies. This is particularly important for commercial products that are generally purchased by private companies as part of an endeavor that is intended to return income to investors. If U.S. companies cannot act in competitive situations in a timely fashion, foreign bidders will have a clear advantage over U.S. companies.

The H.R. 361 passed in 1996 addressed all of these issues to one degree or another, with the exception of safety exemptions which might well be added to Section 114 (l). Overall, industry could support a comparable bill, as long as the above safeguards continued to be included. However, such a bill ought be passed for perhaps a three year period, with the clear understanding that during that time frame the executive branch and the Congress would review all existing export control legislation to examine whether a single law, reflecting the political and technological characteristics of the turn of the century, might not be passed by the next Congress.

AIA hopes that the above comments provide an overview which may help Members in their deliberations both on an extension of the EAA, as well as in future deliberations on totally new export control legislation which would structure a more effective and economically sound export control system for the next century.

3/3/99

Testimony of Dr. Paul Freedenberg
Before the
Subcommittee on International Economic Policy and Trade
March 3, 1999

Madam Chairwoman, members of the Subcommittee, I appreciate the opportunity to testify before you today on the issue of the reauthorization of the Export Administration Act ("EAA"). As a former Assistant Secretary of Trade Administration and Under Secretary of Export Administration in the Administration of President Ronald Reagan, and as a former Staff Director of the Senate Banking Committee's Subcommittee on International Finance, which has jurisdiction over the Act, I believe that I can offer some perspective and some background on this issue. From the time that I left office in 1989 until fall of last year, I was an international trade consultant, specializing in technology transfer issues; so in addition to my administrative experience, I believe that I can also bring the perspective of someone whose clients have been regulated by export control policy to my discussion of the issue.

Today, I will be speaking on behalf of AMT – The Association for Manufacturing Technology, where I am the Director of Government Relations. AMT represents 370 member companies, with sales ranging from $10 million to more than $1 billion, who make machine tools, manufacturing software, and measurement devices. Industry sales total nearly $7 billion and exports account for more than one-third of those sales.

It is my understanding that a major impetus for the Subcommittee's work on the Export Administration Act this year is the apparent recommendation of the still secret Cox Committee Report that the EAA be reauthorized and that part of that reauthorization tighten up the technology transfer rules for exports to China. Since most of the Cox Committee report is still highly classified, I base my assumptions on press reports and on partial declassifications, which have been published by the Clinton Administration. In any event, the invitation to speak before you today asked me to address the need for the reauthorization of the Export Administration Act and any specific thoughts that I had regarding what the Committee ought to include in the text of the new Act.

The fact that the authority of the Export Administration Act lapsed almost five years ago and that the Clinton Administration has been extending that authority under the pretense of an emergency that does not exist by virtue of invoking the International Emergency Economic Powers Act ("IEEPA"), and the fact that the EAA which

has been extended under the authority of IEEPA was last amended in 1988, a year before the collapse of the Soviet Union, would seem to be reason enough to justify the effort to draft and adopt a new EAA to guide export controls in the 21st Century. As to what I would suggest that the new Act contain, a bit of background is in order before I get to specifics.

The most important point to be understood with regard to United States export control policy is that while it is ostensibly aimed at keeping dangerous technology out of the hands of the so-called pariahs, or rogue states, the really important issues revolve around the issue of what to do about China. Unfortunately, the China issue is being addressed unilaterally by our Government, because there is absolutely no consensus within the Western alliance about how to treat technology transfer to China.

The end of the Cold War led to the end of CoCom -- the international coordinating committee that regulated technology transfer since 1949. When CoCom officially went out of business on March 31, 1994, our leverage for limiting technology transfer to China on a multilateral basis disappeared as well. CoCom was created in the same year as NATO, and it stood with NATO as one of the pre-eminent tools of the containment strategy that guided our policy for more than forty years. The guiding premise was that the West could not match the East man for man, tank for tank, or even missile for missile. But if the West maintained tight multilateral controls over the transfer of technology to the East, we could use our superior technology as a force multiplier that would tip the scales to our benefit. The Soviets and their allies could produce great numbers of weapons and keep large numbers of men under arms, but our technological superiority would more than compensate for that numbers deficiency. One example of the validity of this assumption was demonstrated in the 83 to 1 victory of U.S.-built F-15s and F-16s over Soviet-built MIG 21s and MIG 23s over Lebanon's Bekkha Valley in 1982. While pilot skill played an important role in that victory, technology was the critical factor.

The successor regime to CoCom, which is named the Wassenaar Arrangement, after the city in which it was formed, came into existence in 1996. Unfortunately, Wassenaar has none of the elaborate rules or discipline that characterized CoCom. Most importantly, the United States Government no longer has a veto over the goods and technologies exported to the target countries of Wassenaar. The current multilateral export control regime is based on what is known as "national discretion." Each Wassenaar member makes its own judgments about what it will and will not license for

export and, as a matter of fact, whether to require an individual validated license ("IVL") at all. Other multilateral export control regimes, whose focus is non-proliferation (such as the Nuclear Suppliers Group, the Missile Technology Control Regime, and the Australia Group), do obligate signatories to require an IVL for the export of proscribed items to non-members, but Wassenaar does not.

Moreover, to further complicate the matter, China is not identified as a target of Wassenaar. In fact, during the negotiations which led up to the formation of Wassenaar, the U.S. representatives explicitly assured other potential members that Wassenaar was created to keep dangerous weapons and technologies out of the hands of the so-called rogue and pariah states: Iran, Iraq, Libya, and North Korea. But China was explicitly excluded from this group.

This brings me to an important point about the lack of both national and international consensus regarding China. Judging from official statements over the past decade, it is unclear what U.S. technology transfer policy toward China is. China is obviously seen as a major trading partner, and great effort is put forth to ensure that U.S. companies obtain a major share of the China market, which is predicted to be the largest in the world in most capital goods categories over the next decade. Clearly, however, China is also viewed by U.S. licensing authorities as a potential technology transfer risk. This is reflected in the fact that the U.S. Government is far more rigorous (and more time-consuming) than any other industrialized state in reviewing and disapproving licenses for exports to China.

Based on evidence gathered informally at Wassenaar meetings by the AMT technical advisor to the U.S. delegation, the following machine tool license processing times could be expected:

Germany – The longest it could possibly take is 30 days, although many take less time for processing. For a while there was a 24-hour turn-around promised by the licensing office, but because the big companies tended to camp out in the office and monopolize this service, the licensing agency has discontinued it. Nonetheless, it is only in cases of pre-license check that it takes as long as 30 days. 30

Italy – They expected 30-day turn-around, with extraordinary cases involving pre-license checks to take as long as 60 days. 45

Japan – For their part, the Japanese said that the norm was two to three weeks, with three weeks the cases where there was some sort of pre-license check. 30

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Switzerland – The Swiss said two days was the norm, with the possibility that a license could take as long as 7 to 10 days to process if it were difficult. 20

Subsequent reports by commercial and economic officers posted at embassies in those countries have confirmed these informal license processing time estimates. When these comparative timeframes were raised with U.S. Government officials, the response that AMT received from them was that the various agencies involved almost always processed licenses within the 30-day time limit that the statute prescribes. But this time estimate fails to take into account times when the clock is stopped in order to obtain more information from the exporter, which is a quite frequent occurrence. And, even more significantly, the 30 days does not include the time that it takes to complete the Government's end-user check, which is almost always a very time consuming activity. U.S. companies are judged by their customers not merely by the time that any particular agency of the U.S. Government completes its license processing but rather by the total elapsed time that it takes for delivery from the moment that the order is placed. Any legislative provisions aimed at improvements in the licensing process must include improvements in the total licensing time, not just the time that licensing officials actually have physical possession of the license.

In addition to the total elapsed time that it takes to process a license, statistics demonstrate that the United States Government is far more likely to disapprove machine tool licenses for China than any of our European competitors. (This is true in many other sectors as well, but I will concentrate on machine tool exports, where I have the most complete data.) While a mere handful of U.S. machine tool licenses have been approved over the past five years (a total of 25 licenses, or five licenses per year), trade statistics indicate that our European allies have shipped a huge volume of far more sophisticated machine tools to Chinese end-users.

China is the largest overseas market (in dollars) for U.S. machine tools, and it has the potential to grow significantly from its current total of machine tool imports from all sources of $2 billion. However, unlike other East Asian markets where U.S. market share has been substantial, U.S. machine tool sales represent a relatively small percentage of the Chinese market.

For example, South Korea is at a similar point in its economic plan as China. Both South Korea and China are developing their auto industries, high-volume consumer durables, small and medium combustion engines, and second-tier aerospace industries. Both China and South Korea have indigenous machine tool industries, but the

development of their respective metalworking industries requires imported machine tools.

There is a major difference, however, in the way U.S. export control policy views the two countries. Korea is an ally of the United States and U.S. export control policy reflects that. By contrast, the U. S. government's implementation of the Wassenaar export control list toward China is highly restrictive. One result is that China imports only 9.9 percent of its machine tools from the U.S. By contrast, Korea, which is not subject to restrictive U.S. export controls, imports 22.3 percent of its machine tools from U.S. providers. If one attributes the difference in import totals to the difference in U.S. export control policy toward the two countries, it can be argued that the cost to U.S. machine tool builders of the restrictive export control policy is approximately a quarter of a billion dollars per year in lost export sales to China.

On a global basis, U.S. machine tool production represents 12.8 percent on the world's total consumption of machine tools. This figure is 29 percent higher than U.S. machine tool producers' share of Chinese imports (9.9%). A major reason for this differential is that Western European countries are exporting to China modern machine tools that would be unlikely to be licensed by the U.S. government. As evidence of this, the average unit prices of European machine tools in categories likely to be subject to controls are up to 250% higher than the average unit prices for machine tools in the same categories exported from the U.S. to China. In 1996, while the average unit price of machine tools sold to China by U.S. manufacturers was $155,000. The average unit price of those sold by Italy was $208,000, by Switzerland $348,000, and by Germany $407,000. Average unit prices are a key indicator of the sophistication, accuracy, and productivity enhancement of machine tools. Those factors are accounted for by higher precision, five-axis (and above) machine tools that perform more productively and thereby command a higher price. But it is precisely those characteristics that cause a machine tool to be listed on the Wassenaar restricted list of technologies. If this is true, the statistics indicate that Europeans are shipping to China machines that, had they been produced in the United States, would be very rigorously reviewed by the U.S. Government, with a low probability of their being granted an export license.

The U.S. Government's rigorously enforced limits on machine tools significantly disadvantage U.S. machine tool builders in the

global marketplace, since China has proved able to buy from a variety of foreign makers in Japan and Europe. One U.S. company reported, based on its agents' personal observations that between 1993 and 1996, fifteen large, five-axis machines tolls were purchased by Chinese aerospace end users. All fifteen were made by Western European manufacturers. In addition, Shenyang Aircraft purchased twelve five-axis machine tools **last year alone.** These machine tools came from Italian, German, and French factories and not a single one from American machine tool producers.

Chinese importers often wish to buy several machines at one time to upgrade a factory or to complete or augment a production line. The inability of U.S. manufacturers to guarantee delivery of a particular machine tool requiring a license has an amplified effect on sales of machines that do not require a license. For example, Germany's market share of machine tools is more than double the U.S. market share of machine tools imported by China. The trade figures indicate that by freely selling the same sophisticated machine tools to the Chinese which would be most likely unavailable from United States manufacturers, German and other European providers are also garnering sales in the non-controlled machine tool categories as well, further disadvantaging U.S. manufacturers.

This is made even more frustrating to U.S. machine tool builders and their workers by the fact that many of the commercial aircraft factories in China contain joint ventures and co-production arrangements with American aircraft companies. In other words, despite the fact that these Chinese factories are supervised, or monitored, by American executives (or at least have a strong American presence to assure the production of quality components), U.S. Government policy assures that machine tools in those factories are produced by **European** machine tool builders. How does that assure our national security?

And, as I have noted, while machine tool license applications to China are likely to be approved in a matter of days, or weeks, by our European allies, U.S. applications languish for months, or longer. Executives of U.S. machine tool companies have told me that they have decided to forego business in China if it involves an export license application. That is how discouraged they have become by the current licensing process. For their part, the Chinese have written to U.S. companies telling them that they will not even ask them to bid for business, since the Chinese experience with the U.S. licensing process has been so negative and so time-consuming.

This inability to predict or control foreign machine tool exports

to China is particularly burdensome for the U.S. machine tool industry, because recent market projections have indicated that China will represent the largest and fastest growing market for commercial jet aircraft in the first two decades of the 21st Century. As recently as 1995 China represented less than two percent of Boeing sales, today China represents seven percent, and Boeing estimates that China will be the largest market outside the U.S. over the next 20 years. Within the next seven years, China could account for nearly 25 percent of Boeing's total business.

In 1992, 90 percent of Boeing's aircraft components were built in the United States. Today, more than half the components are imported. China's exports to the U.S. of civilian aerospace components have grown 63 percent in the past five years. Moreover, Boeing's acquisition of McDonnell Douglas has given them an operation in which half of the MD-90 (and its successor, the 717) built each year are wholly constructed in China. Given the tremendous market power that China will possess, it is certain that the Chinese Government will demand and receive what are known as "offset" contracts to build ever greater shares of Boeing's aircraft in their own aircraft factories on their own machine tools. If this current trend continues, however, under the current United States Government export control licensing policy, U.S. machine tool builders are highly likely to be displaced and replaced by their European and Japanese competitors who will be able to take advantage of a far more lenient export licensing policy to make the sales to stock the new productions lines that the Chinese will demand.

Machine tool licenses to China are but one example of a larger problem -- the lack of international consensus about how to regulate technology transfer to China. Whatever technology transfer concerns the U.S. Government may have about China are not reflected in the largest and most active multilateral export control regimes to which we belong. The absence of a China reference in Wassenaar means that there are no internationally agreed upon rules or standards that the U.S. Government can cite to induce our allies to follow our lead with regard to China technology transfer policy. That is as true in other major sectors, such as semiconductor manufacturing, or telecommunications, or in computers, as it is in machine tools.

Indeed, our former adversary Russia is a charter member of the Wasssenaar Arrangement, and China would see any attempt to make them a target of this export control regime as a hostile act. In fact, discussions have been held recently with the goal

of making China a Wassenaar member. I note all of this in order to provide some perspective regarding the degree to which the United States Government lacks leverage in denying any sort of technology to China. The United States may decide not to sell machine tools or computers, or telecommunications, but that does not obligate the Japanese, the Germans, or the French to follow our lead.

That is a fundamental problem with the current export regime. Not only does it indicate a lack of discipline regarding a country with which the United States Government has indicated technology transfer concerns; it also puts U.S. companies on an uneven playing field with regard to sales to what is likely to be the fastest growing and largest market for capital goods over the coming decade. Repeatedly over the past few years, whether it is in the category of machine tools, semiconductor production equipment, or aircraft engines, the United States Government has taken a negative approach to technology transfer to China while our allies have not. The result has been that the Chinese are denied nothing in terms of high technology, but U.S. firms have lost out in a crucial market. This serves neither our commercial nor our strategic interests.

RECOMMENDATIONS

Any EAA that this Committee produces ought to have a very strong provision defining "foreign availability" in terms of the reality in which U.S. companies compete today. Current law defines "foreign availability" as any item that can be supplied from *outside* the multilateral export control system in sufficient quantity and comparable quality so as to make the existing export controls on any particular item ineffective in achieving the objective of the controls. In an age of weak to non-existent multilateral controls and a multilateral system with rules of the game that allow any member country to decide whether to license a product on the basis of "national discretion," the Committee needs to write legislation that acknowledges that "foreign availability" can exist *within* a multilateral control system, not just outside that system.

An example of such language can be found in the original reauthorization bill that was passed by the House in 1996, H.R. 361. Section 116 (11) defines "foreign availability" and "available in fact to controlled countries" and makes a very important distinction regarding foreign availability: "the mere

inclusion of items on a list of items subject to export controls imposed pursuant to a multilateral export control regime shall not alone constitute credible evidence that the government of a country provides an effective means of controlling the export of such items to controlled countries."

I would consider the inclusion of such language in any EAA reauthorization reported by this Committee to be of critical importance to the creation of a fair and equitable "foreign availability" definition, one that reflects the new reality in which U.S. companies find themselves. Any new EAA should not be allowed to perpetuate the fiction that the current multilateral export control system functions effectively to deny technology to targets of that regime, particularly China, which I have argued has, at best, an ambiguous status in relation to the Wassenaar Arrangement's list of restricted technologies. Not to give U.S. companies the right to petition for relief from a system which allows trade competitors to use the multilateral system to garner new business by taking advantage of lax, or non-existent, national export control systems, would be to perpetuate an anachronism in the law grounded in an era that no longer exists.

With regard to other provisions that I would like to see included in any new legislation, I would rather frame my advice in terms of items that **ought not** to be included in any legislation: First, it is important **not** to change the current inter-agency license decision-making structure, which allows a dissenting licensing official to escalate his or her concerns up to the next highest level of decision-making, all the way up to the President if the political level of the dissenting agency concerned is dissatisfied with the results of its appeal. To change this system into one which requires consensus at all licensing levels would be to re-introduce a veto system back into license processing. Any one individual licensing official at any level in any agency could then deny a license with little or no justification. This, almost certainly, would lead to vastly greater numbers of license denials and certainly much greater delays in the cases of those licenses that do ultimately receive approval. It would reverse what little progress there is in a system that is already too complex and too slow to allow, as I have demonstrated, the machine tool industry, among others, to compete with our foreign competitors.

Second, it is important not to demand that the China Government to agree in advance to surprise inspections as a

pre-condition for license approvals to China (as the Cox Committee has apparently recommended). Such a demand would almost certainly mean that the Chinese would turn to our trade competitors for all items on the Wassenaar technology control list. Even the United States, which is the most open and transparent government in the world, does not allow surprise foreign inspections of its facilities. The Chinese would be no less adamant.

If the demand for surprise inspections is being proposed as a surrogate for cutting off high technology trade with China, we ought to have the debate out in the open, with both sides understanding what is at stake. I have long maintained that we need to have a fundamental debate within the United States Congress **and** between the United States Government and its allies about what our technology transfer policy towards China ought to be. How important is the China market to our overall economy and to individual sectors of our economy? What are the strategic risks of transferring technology to China in various sectors? What are the benefits? And, most importantly, if we really do have technology transfer concerns about China in certain sectors, do we have the ability to deny the Chinese anything? It does little good for the United States to drop out of the high technology China trade game if our allies step right in and take up the slack -- as they are already doing today in a number of sectors, such as the machine tool example that I cited.

We need more than just a "feel good" China policy, or a "feel good" renewal of the EAA. We need to ask if it is possible to convince our allies to share our strategic vision of China (assuming that we ourselves have concluded what that vision is). At the current time, as I have pointed out, we do not have a multilateral technology transfer organizational structure that is conducive to entering into a debate about China -- let alone one that would be able to enforce standards and rules about technology transfer if such a consensus were to be reached. Without such a multilateral technology transfer structure and without a clearer idea of what U.S. technology transfer policy toward China ought to be it will be difficult to draft an EAA that is an effective guide to policy.

I hope that these comments will be helpful to your consideration of any new export control legislation, and I would be happy to answer any questions that the Subcommittee might have